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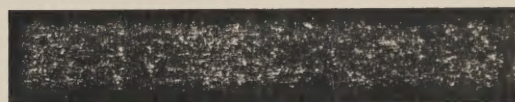
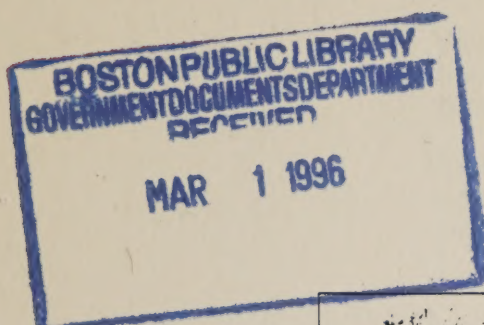
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Article 26A & 26B

THE LINKAGE
REGULATION

- CITY OF BOSTON
RAYMOND L. FLYNN
Mayor
- BOSTON REDEVELOPMENT AUTHORITY
STEPHEN COYLE
Director
- ROBERT L. FARRELL
Chairman
- JOSEPH J. WALSH
Vice-Chairman
- JAMES K. FLAHERTY
Treasurer
- CLARENCE J. JONES
Vice-Treasurer
- MICHAEL F. DONLAN
Vice-Chairman, Sub-Committees
- KANE SIMONIAN
Secretary

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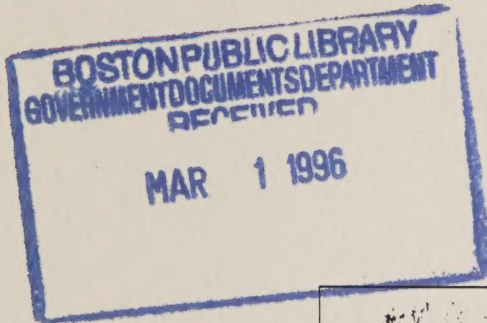
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Article 26A & 26B

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- KANE SIMONIAN
Secretary



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Linkage Fact Sheet

Questions and Answers on Linkage

Illustration of Linkage Program

1

Text Amendment No. 80 - Article 26A
Development Impact Projects-
Housing

Text Amendment No. 81 Article 26B
Development Impact Projects-
Job Training

2

Home Rule Petition

3

Housing Creation Regulation

4

News Articles

5

LINKAGE FACT SHEET

Linkage Facts:

- o Articles 26A and 26B became effective February 27, 1986.
- o To date, approximately \$40 million in linkage funds have been earmarked with first payments due in April, 1987.
- o San Francisco, Seattle, Princeton, and Santa Monica are among the other cities with housing linkage programs.
- o Boston is the first city in the country to have a jobs training linkage program.

Linkage Provisions:

Article 26A, which is the housing linkage program, includes the following:

- o A developer may comply with linkage by making a housing contribution or choosing the housing creation option.
- o Boston's linkage program provides that developers of commercial projects over 100,000, requiring zoning relief, must make linkage contributions.
- o The housing contribution for downtown commercial buildings is \$5 per square foot for each square foot of floor area over 100,000 square feet, payable over seven years, commencing at building permit.
- o The housing contribution for commercial buildings outside of the downtown is \$5 per square foot for each square foot of floor area over 100,000 square feet, payable over twelve years, beginning with the certificate of occupancy.
- o 10% of the housing contribution made for downtown projects and 20% for neighborhood projects will be targeted to the impacted neighborhood.
- o A developer may choose the housing creation option, whereby the contribution is made up front, based on the present value of the housing contribution.
- o Contributions are to be paid to the Neighborhood Housing Trust.

Article 26B, the job training linkage program, includes the following provisions:

- o Developers of commercial buildings throughout the city will make payments of \$1 per square foot for each square foot of floor area over 100,000 square feet.
- o Payments will be made over two years.

- o First payment will be due upon issuance of the building permit.
- o The jobs contribution will be recalculated every three years, based on employment and economic trends.

Questions and Answers on the Linkage Program

Q. How was linkage established?

A. In December 1983, the Boston Zoning Commission established a "linkage" mechanism under the Boston Zoning Code for the creation of low- and moderate-income housing. It did so by adopting Article 26 of the Zoning Code which requires that developers of large-scale commercial projects make payments into a fund to create affordable housing.

Q. Is linkage legal?

A. Yes. Boston's linkage program has been upheld by the State Supreme Judicial Court. Boston has filed a home rule petition which has been approved by the City Council to support the linkage program.

Q. What are the regulations for the linkage program?

A. Article 26A is the housing linkage program. This regulation reduces the payback period for downtown projects subject to linkage from twelve to seven years, and requires that payments begin at the issuance of a building permit. Under Article 26A twenty percent of linkage payments from neighborhood projects are targeted to the neighborhood where development occurs. Ten percent of linkage payments from downtown projects are so targeted.

Article 26B requires a fee of \$1 per square foot over 100,000 square feet of new or substantially rehabilitated commercial space. The funds will be used for job training. The money will be collected in two annual installments beginning with the issuance of a building permit. Job training linkage will apply to downtown and neighborhood projects. Jobs Contribution payments may be used to create a job training program for workers who will be employed by the project on a permanent-basis. Twenty percent of any Jobs Contribution payments will be reserved for the impacted neighborhood.

Q. When will the linkage fees be collected?

A. The \$1 per square foot earmarked for job training will be made in two equal annual installments, the first of which will be due upon issuance of the building permit. The housing contribution will be collected over a seven year period starting upon issuance of the building permit for downtown projects; and over twelve years for neighborhood projects beginning either two years after the issuance of a building permit or upon the issuance of a certificate of occupancy, whichever is sooner.

Q. Has any linkage money been collected by the city?

A. To date, approximately 40 million dollars have been earmarked through agreements with developers. The first payments are due April, 1987.

Q. Do other cities have linkage programs?

A. Yes. San Francisco, Seattle, Princeton and Santa Monica are some of the cities that have a linkage program to raise additional funds for housing. San Francisco's programs also requires payments for child care and transit improvements. Boston is the first city in the country to incorporate a fee for job training into its zoning regulations.

NEW LINKAGE PROGRAM

DOWNTOWN

Jobs

payable at building permit

\$1 over 2 yrs

AND

Housing

payable at building permit

\$5 over 7 yrs

NEIGHBORHOODS

Jobs

payable at building permit

\$1 over 2 yrs

AND

Housing

payable at certificate of
occupancy or
2 years

after building permit

\$5 over 12 yrs



TEXT AMENDMENT NO. 80
THE COMMONWEALTH OF MASSACHUSETTS
CITY OF BOSTON
IN ZONING COMMISSION

EFFECTIVE
February 27, 1986†

The Zoning Commission of the City of Boston, acting under Chapter 665 of the Acts of 1956 as amended, after due report, notice and hearing does hereby amend the Boston Zoning Code as follows:

A. By inserting, after Article 26 of said Code, the following article:

ARTICLE 26A

DEVELOPMENT IMPACT PROJECTS - HOUSING

SECTION 26A-1. Statement of Purpose. The purpose of this article is to promote the public health, safety, convenience and welfare; to prevent overcrowding and deterioration of existing housing; to preserve and increase the City's housing stock; to establish a balance between new, large-scale real estate development and the housing needs of the City; and to mitigate the impacts of large-scale development on the available supply of low and moderate income housing, by provisions designed to:

1. Afford review and regulation of large-scale real estate development projects which directly or indirectly displace low or moderate income residents from housing units or contribute to an increase in the costs of housing.
2. Increase the availability of low and moderate income housing by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the zoning map or text, to create low and moderate income housing or to make a housing contribution grant to the Neighborhood Housing Trust ("Trust").

SECTION 26A-2. Definitions.

1. "Development Impact Project", any development in the City in which it is proposed to erect a structure or structures having a total gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area.

†Date of public notice: February 13, 1986 (see St. 1956, c. 665, s. 5).

(exclusive of all accessory parking garage space) by more than one hundred thousand (100,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet; which structure or structures is (are) intended for a use for which the use item number is listed in Table D, Section 26A-3(2)(a), or, for a use for which the use item number is not listed if such Project will directly result in a reduction in the supply of low and moderate income dwelling units as determined by the Boston Redevelopment Authority ("Authority") and which Project requires a variance, conditional use permit, exception, or zoning map or text amendment.

2. "Development Impact Project Plan", a plan for a project which is a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the structure or structures, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, and proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, the neighborhood where the Project is located and the adjacent neighborhoods, and such other matters as the Director of the Authority deems appropriate to his consideration of the proposed construction.
3. "Development Impact Project Contribution", the creation, by the Project applicant, of low and moderate income housing units by means of the Housing Creation Option, or the grant and payment of a sum of money by the Project applicant by means of the Housing Contribution Option calculated according to the formula as set forth in Section 26A-3(2), to and for the exclusive benefit of the Neighborhood Housing Trust.
 - (a) The Housing Creation Option shall be met by creating or causing to be created housing units, for occupancy exclusively by low and moderate income residents of the City, at a cost at least equivalent to the amount of the Housing Contribution Grant, and in conformity with written regulations to be adopted by the Authority after public notice and hearing. The actual Housing Creation Contribution may be approved by the Authority only after public notice and hearing.
 - (b) The Housing Contribution Grant shall be made to the Neighborhood Housing Trust in seven (7) equal, annual installments, the first installment due upon the issuance of a building permit. The remaining six (6) payments of the Grant shall be due and payable annually on the anniversary of the first payment. All payments constituting the Housing Contribution Grant shall be made to the Collector-Treasurer of the City as custodian pending acceptance of such payments for the Trust by the City. Any payments made by the Project applicant to the Neighborhood Housing Trust, on account of the Housing Contribution Option, shall be credited against any amounts due to said Trust on account of any neighborhood impact excise which may be assessed by the City.

(c) Ten percent (10%) of any Housing Contribution Grant made for projects located in the area lying within the boundaries set forth in Section 26A-4 and twenty percent (20%) of any Housing Contribution Grant made for projects located in areas lying outside of these boundaries shall be reserved for the neighborhood or neighborhoods where or adjacent to where the Project is located ("impacted neighborhood") as defined in the approved Development Impact Project Plan, provided that the Neighborhood Housing Trust finds that in the targeted area proposals for feasible housing projects can be developed.

4. "Substantially rehabilitate", to cause alterations or repairs to be made, to a structure or structures, costing in excess of fifty percent (50%) of the physical value of the structure or structures. Physical value of a structure or structures shall be based on the assessed value as recorded on the assessment rolls of the City as of the January 1 preceding the date of the application for Development Impact Project Plan approval.
5. "Neighborhood Housing Trust", a Massachusetts public charitable trust created under the laws of the Commonwealth on November 19, 1985 and administered by the Collector-Treasurer of the City as managing trustee or another trust, if passed by the Council and approved by the Mayor.
6. "Public agency", a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth or of the United States.
7. "Low and moderate income residents", households located in the city whose total annual income is not more than eighty percent (80%) of the median income for the Boston area as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to the Housing and Community Development Act of 1974, as amended.

SECTION 26A-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map or text amendment for a Development Impact Project shall be granted or adopted unless the following requirements are met:

1. The Authority, after a public meeting, shall have approved a Development Impact Project Plan. No Plan shall be approved by the Authority unless the Authority finds that the Plan conforms to the general plan for the City as a whole and that nothing in such Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
2. The person or persons making application for a variance, conditional use permit, exception or zoning map or text amendment to erect, substantially rehabilitate, enlarge, or extend a structure pursuant to a Development Impact Project Plan shall also have entered into an agreement with the Authority to make a Development Impact Project Contribution.

- (a) For each use listed below, in Table D, a Housing Contribution Grant of five dollars (\$5.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than accessory parking, that are ancillary or accessory to the uses listed in Table D shall also be subject to the Housing Contribution Grant requirement.

TABLE D: Development Impact Uses

<u>Use</u>	<u>Use Item Numbers</u>
Office	39, 39A, 40, 41, 42
Retail Business and Service	30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61
Institutional and Educational	16, 16A, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 29
Hotel and Motel, but not including Apartment Hotel	15

- (b) For mixed-use structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the uses shall in the aggregate exceed one hundred thousand (100,000) square feet.
- (c) The formula (amount and rate of payment) for the Housing Contribution Grant for the use categories listed in Table D shall be subject to recalculation three (3) years after the effective date of this provision and every three (3) years thereafter. The Authority, after public notice and public hearing, when appropriate shall make a recommendation to the Zoning Commission to amend the formula for the Housing Contribution Grant, based on a consideration of the following criteria:
- (i) Economic trends measured in terms including but not limited to development activity, commercial rents per square foot, employment growth, and inflation rates.
 - (ii) Housing trends measured in terms of, including but not limited to, vacancy rates for low and moderate income housing, and production statistics for new dwelling units.
- (d) The Commissioner of Inspectional Services shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Development Impact Project Plan, unless the Director of the Authority has certified on the application

therefor, and on each plan, drawing or specification filed with the Commissioner in connection therewith, that the plans have been subject to design review, and that the plans are consistent with the Authority-approved Development Impact Project Plan and that the applicant has entered into an agreement with the Authority, as provided in Sections 26A-2(3) and 26A-3(2).

3. The following are not Development Impact Projects and will not be subject to the Development Impact Project requirements:
 - (a) Any structure for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of Article 26A, provided that construction work under such a permit is commenced within six months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;
 - (b) Any structure for which construction or permanent financing has been secured before notice of hearing before the Zoning Commission has first been given respecting Article 26A, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or
 - (c) Any building or structure which is, or will be, wholly-owned by one or more public agencies.
4. Article 26A supplements and does not repeal Article 26, which shall continue to apply to Development Impact Project Plans that were approved pursuant to Article 26. Development Impact Project Plans approved pursuant to Article 26 prior to the effective date of Article 26A shall not be subject to the requirements of Article 26A.

SECTION 26A-4. Applicability. The rate of payment set forth in Section 26A-2(3)(b) shall only apply to Development Impact Projects located in an area lying within the boundaries set forth below:

Beginning at the intersection of the southern bank of the Charles River and the centerline of Massachusetts Avenue and running southerly and southeasterly along the centerline of Massachusetts Avenue to the intersection with the centerline of Tremont Street;

Thence running northeasterly along the centerline of Tremont Street to the centerline of East Berkeley Street;

Thence running easterly along the centerline of East Berkeley Street and the West Fourth Street Bridge to the intersection with the centerline of Dorchester Avenue;

Thence running northerly along the centerline of old Dorchester Avenue to the intersection with the edge of land on the northwesterly side of Fort Point Channel;

Thence running northeasterly along the water's edge or the U.S. Pierhead Line, whichever shall be more inclusive, to the Metropolitan District Commission Dam at the mouth of the Charles River;

Thence running across the southerly side of the Metropolitan District Commission Dam and along the southerly bank of the Charles River to the beginning point at the intersection thereof with the centerline of Massachusetts Avenue.

The rate of payment set forth in Section 26-2(3)(a) shall apply to Development Impact Projects located in all other areas of the City. Section 26-2(3)(a) provides in relevant part that:

The Housing Contribution Grant shall be made to the Neighborhood Housing Trust in twelve (12) equal, annual installments, the first installment due upon the issuance of a certificate of occupancy for the Project building or twenty-four (24) months after the granting of the building permit, whichever comes first. The remaining eleven (11) payments shall be due and payable annually on the anniversary of the first payment.

Where the boundary described above divides a Development Impact Project, the rate of payment set forth in Section 26A-2(3)(b) shall apply. Use item numbers 11, 12, 13, 13A, 14 and 17 shall be exempt from the provisions of Articles 26 and 26A.

SECTION 26A-5. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be ruled invalid by any decision of court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

- B. By adding, in Section 6-3(f), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3" deleting the period and adding the phrase "or 26A-3 and in Section 26B-3."
- C. By adding, in Section 6A-3(c), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3" deleting the period and adding the phrase "or 26A-3 and in Section 26B-3."
- D. By adding, in Section 7-3(d), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3," deleting the comma and adding the phrase "or 26A-3 and in Section 26B-3,".

Richard B. Foster

Chairman

Vice Chairman

Alia

Ameyn M Watson

Ana M. Tersch

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Robert Gordon

Реш. 6) См. 2

In Zoning Commission

Adopted: February 26, 1986

Attest:

Maunice Hildbrand
Secretary

Secretary

Raymond L. Lynd

Mayor, City of Boston

Date: February 27, 1986

The foregoing amendment was presented to the Mayor on February 27, 1986, and was signed by him on February 27, 1986, whereupon it became effective on February 27, 1986, in accordance with the provisions of Section 3 of Chapter 665 of the Acts of 1956.

Attest:

Minneapolis, Minn. 1900

Secretary

TEXT AMENDMENT NO. 81
THE COMMONWEALTH OF MASSACHUSETTS
CITY OF BOSTON
IN ZONING COMMISSION

EFFECTIVE
February 27, 1986†

The Zoning Commission of the City of Boston, acting under Chapter 665 of the Acts of 1956 as amended, after due report, notice and hearing does hereby amend the Boston Zoning Code as follows:

A. By inserting, after Article 26A of said Code, the following article:

ARTICLE 26B

DEVELOPMENT IMPACT PROJECTS - JOB TRAINING

SECTION 26B-1. Statement of Purpose.

The purpose of this article is to promote the public health, safety, convenience and welfare and to mitigate the adverse impacts of new large-scale real estate development projects on existing development by providing for job training for low and moderate income people. In particular, the owners of new commercial uses, which are more capital intensive and less land intensive than industrial uses, can pay more for land than owners of manufacturing uses; therefore these uses directly result in higher land costs and indirectly cause further land price increases by increasing housing demand. Workers will therefore need to be trained so that they will have the job skills necessary to compete for these new jobs. This Article is designed to:

1. Afford review and to regulate large-scale real estate development projects which result in the creation of new jobs, requiring the creation of new job training programs or the expansion of existing ones.
2. Increase the opportunities for job training for low and moderate income people by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the zoning map or text, to make a development impact payment to the Neighborhood Jobs Trust.

†Date of public notice: February 13, 1986 (see St. 1956, c. 665, s. 5.)

SECTION 26B-2. Definitions.

1. "Development Impact Project", any development in the City of Boston ("City") in which it is proposed to erect a structure or structures having a gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area (exclusive of all accessory parking garage space) by more than one hundred thousand (100,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet; which structure or structures is (are) intended for a use for which the use item number is listed in Table E, Section 26B-3; and which development requires a variance, conditional use permit, exception, or zoning map or text amendment.
2. "Development Impact Project Plan", a plan for a project which is a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the structure or structures, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, and proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, and such other matters as the Director of the Boston Redevelopment Authority ("Authority") deems appropriate to his consideration of the proposed construction.
3. "Jobs Contribution Grant", the payment of a sum of money by the Project applicant, for which a formula for payment is set forth in Section 26B-3(1)(a), to or for the exclusive benefit of the Neighborhood Jobs Trust.
 - a. The Jobs Contribution Grant shall be made to the Neighborhood Jobs Trust in two (2) equal, annual installments, the first installment due upon the issuance of a building permit. The remaining payment shall be due and payable on the anniversary of the first payment. All Jobs Contribution Grants shall be made to the Collector-Treasurer of the City as custodian, pending acceptance of such payments for the Neighborhood Jobs Trust by the City. All Jobs Contribution Grants shall be credited against any amounts due to said Trust on account of any neighborhood impact excise which may be assessed by the City.
 - b. Twenty percent (20%) of any Jobs Contribution Grant shall be reserved for the neighborhood or neighborhoods where or adjacent to where the Project is located, as defined in the approved Development Impact Project Plan.
 - c. Jobs Creation Contribution. A project applicant may use its Jobs Contribution Grant to create a job training program for workers who will be employed, on a permanent basis, at the Project, upon approval by the Director of the Mayor's Office of Jobs and Community Services

4. "Substantially rehabilitate", to cause alterations or repairs to be made, to a structure or structures, within any period of twelve (12) months, costing in excess of fifty percent (50%) of the physical value of the structure or structures. Physical value shall be based on the assessed value as recorded on the assessment rolls of the City as of January 1 next preceding the date of the application for Development Impact Project Plan approval.
5. "Neighborhood Jobs Trust", a Massachusetts public charitable trust created under the laws of the Commonwealth on November 19, 1985 and administered by the Collector-Treasurer of the City as managing trustee or another trust, if passed by the Council and approved by the Mayor.
6. "Public agency", a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth, or of the United States.

SECTION 26B-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map or text amendment for a Development Impact Project shall be granted or adopted unless the following requirements are met in addition to those set forth in Section 26A-3:

1. The person or persons making application for a variance, conditional use permit, exception, or zoning map or text amendment to erect, substantially rehabilitate, enlarge, or extend a structure pursuant to a Development Impact Project Plan approval shall also have entered into an agreement with the Authority to make a Jobs Contribution Grant in the amount specified in (a) below.
 - (a) For each use listed in Table E, a Jobs Contribution Grant of one dollar (\$1.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than accessory parking, that are accessory to the uses listed in Table E shall also be subject to the Jobs Contribution Grant.

TABLE E: Development Impact Uses

<u>Use</u>	<u>Use Item Numbers</u>
Office	39, 39A, 40, 41, 42
Retail Business and Service	30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61
Institutional and Educational	16, 16A, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 29
Hotel and Motel, but not including Apartment Hotel	15

- (b) For mixed-use structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the uses shall in the aggregate exceed one hundred thousand (100,000) square feet.
- (c) The formula (amount and rate of payment) for the Jobs Contribution Grant for the use categories listed in Table E shall be subject to recalculation three (3) years after the effective date of this provision and every three (3) years thereafter. The Authority, after public notice and public hearing, where appropriate, shall make a recommendation to the Zoning Commission to amend the formula for the Jobs Contribution Grant, based on a consideration of the following criteria:
 - (i) Economic trends measured in terms of, including but not limited to, development activity, commercial rents per square foot, employment growth, and inflation rates.
 - (ii) Employment trends measured in terms of, including but not limited to, unemployment rates, and statistics on job training programs.

The resulting analysis will determine the changes in the City's employment training needs and the continuing ability of new, large-scale development to assist in meeting the employment training needs of the City.

- (d) The Commissioner of Inspectional Services shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Development Impact Project Plan, unless the Director of the Authority has certified on the application therefor, and on each plan, drawing or specification filed with the Commissioner in connection therewith, that the plans have been subject to design review, and that the plans are consistent with the Authority-approved Development Impact Project Plan and that the applicant has entered into an agreement with the Authority, as provided in Sections 26B-2(3) and 26B-3(1).
2. The following are not Development Impact Projects and will not be subject to the Development Impact Project requirements:
- (a) Any structure or structures for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of Article 26B, provided that construction work under such a permit is commenced within six (6) months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;
 - (b) Any building or structure for which construction or permanent financing has been secured before notice of hearing before the Zoning Commission has first been given respecting Article 26A, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or

(c) Any building or structure which is, or will be, wholly-owned by one or more public agencies.

3. Development Impact Project Plans approved pursuant to Article 26 prior to the effective date of Article 26B shall not be subject to the requirements of Article 26B.

SECTION 26B-4. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be ruled invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

Richard A. Tucker
Chairman

Vice Chairman

David H. Carr
Robert M. Watson
Alice M. Perry
John J. DeLoach
Robert J. Anderson
Joseph W. Joyce

In Zoning Commission

Adopted: February 26, 1986

Attest: Marjorie Kildbrand
Secretary

Raymond L. Flynn
Mayor, City of Boston

Date: February 27, 1986

The foregoing amendment was presented to the Mayor on February 27, 1986, and was signed by him on February 27, 1986, whereupon it became effective on February 27, 1986, in accordance with the provisions of Section 3 of Chapter 665 of the Acts of 1956.

Attest: Marjorie Kildbrand
Secretary

CITY OF BOSTON
IN CITY COUNCIL

AN ACT AUTHORIZING CERTAIN ACTIONS BY
CITY OF BOSTON TO MITIGATE THE EFFECTS OF NEW
LARGE-SCALE COMMERCIAL REAL ESTATE DEVELOPMENT (LINKAGE)

ORDERED:- That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause (1) of Section eight of Article two, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted providing precisely as follows, except for clerical or editorial changes of form only:—

1. SECTION ONE. Preamble

2. Whereas, the General Court finds and declares that a
3. serious public emergency exists in the City of Boston with
4. respect to the housing and also the employment of a substantial
5. number of the citizens of said city, as further described
6. below; and

7. Whereas, due to the City of Boston's concentrated
8. population, its intense land use by business, educational,
9. governmental, and religious entities, its role as the center of
10. commerce and finance in New England, and its geographic layout,
11. the City of Boston is unique in the Commonwealth of
12. Massachusetts; and

13. Whereas, there is not an adequate supply of affordable
14. housing for low and moderate income residents of the city; and

15. Whereas, this situation cannot be readily remedied the
16. ordinary operations of private enterprise; and

17. Whereas, the construction of new large-scale commercial
18. real estate developments in the city tends to reduce the supply
19. of affordable housing available to low and moderate income
20. residents; and

Whereas, the construction of new large-scale commercial real estate developments, without the obligation to mitigate their adverse impact on the availability of such affordable housing, is contrary to the public health, safety, convenience and welfare; and

Whereas, there is an urgent need to supply affordable housing for low and moderate income residents of the city in conjunction with the construction of new large-scale commercial real estate developments; and

Whereas, the construction of new large-scale commercial real estate developments in the city influences land use patterns and can directly and indirectly eliminate existing businesses; and

Whereas, new large-scale commercial real estate developments influence employment opportunities for low and moderate income residents and tend to reduce the number of jobs for which low and moderate income residents of the city are qualified; and

Whereas, new large-scale commercial real estate developments change the character of surrounding areas and, to the extent that such developments create jobs, they create jobs for which low and moderate income residents of the city are not qualified without additional job training; and

Whereas, the construction of new large-scale commercial real estate developments, without the obligation to mitigate their adverse impact on the availability of jobs for which low and moderate income residents of the city are qualified, is

contrary to the public health, safety, convenience and welfare;
and

Whereas, there is an urgent need to provide job training to low and moderate income residents of the city in conjunction with the construction of new large-scale commercial real estate developments; and

Whereas, the foregoing findings are based upon a consideration of city of Boston housing trends, production statistics for new dwellings and housing vacancy rates for affordable housing for low and moderate income residents, as well as a consideration of employment trends, unemployment rates, and statistics on job training programs; and

Whereas, it is hereby determined that: (1) prior to the effective date of this act, developers of new large scale commercial real estate developments, have relied reasonably and in good faith on the applicability to their developments of article 26, article 26A and article 26B of the Boston zoning code;

(2) the approval, grant, or enactment of all zoning code amendments, zoning map amendments, zoning variances, conditional use permits, and zoning exceptions requested by any new large scale commercial real estate developments, is an act of independent legal significance governed by the provisions of the Boston zoning code;

(3) prior to the effective date of this act, owners and financiers of new large scale commercial real estate developments, relying reasonably and in good faith on the validity of zoning code amendments, zoning map amendments,

zoning variances, conditional use permits, and zoning exceptions approved, have invested a substantial amount of funds and time in such projects;

(4) the agreements to make development impact project exactions, development impact project contributions and jobs contribution grants entered into prior to the effective date of this act provide revenues to meet a public exigency for the provisions of affordable housing and job training for low and moderate income residents of the City of Boston; and

(5) there is an urgent need to provide the public with certainty (i) that the funds, time and jobs invested in and dependent upon development impact projects are secure; (ii) that the zoning code amendments, zoning map amendments, zoning variances, conditional use permits, and zoning exceptions upon which such development impact projects depend are secure; and (iii) that the development impact project exactions, development impact project contributions and jobs contribution grants agreed to be made by development impact projects are available for the provision of job training and affordable housing for low and moderate income residents of the City; now

THEREFORE, this act is declared to be in the public interest and necessary for the public health, safety and general welfare of the citizens of the city of Boston.

SECTION TWO. Chapter 665 of the acts of 1956, as amended, is hereby further amended by inserting after section fourteen thereof the following new sections:

Section 15. Definitions

When used in sections 15 through 20 of this act, terms, not otherwise defined, shall be defined in accordance with the definitions contained in the City of Boston Zoning Code as in effect on the date of enactment hereof, unless the context requires otherwise and the following terms shall, unless the context requires otherwise, have the following meanings:-

"Affordable housing" - a unit or units of housing, whether rental, condominium or cooperative, or a single or multi-family owner occupied home exclusively for low and moderate income residents (i) for which the occupancy cost to the residents thereof does not exceed such percentage of the income of the occupant household as may be established from time to time for low and moderate income residents in the Boston area by the United States department of housing and urban development ("HUD"), as the maximum total tenant payment pursuant to section 8 of the United States housing act of 1937, as amended by the housing and community development act of 1974 and as further amended from time to time, and regulations promulgated pursuant thereto, or (ii), as otherwise defined by the zoning commission through its adoption of the definition of any state or federal agency, authority, department or similar instrumentality providing financial assistance to reduce the occupancy cost of housing to low and moderate income residents.

"Affordable housing exaction" - a contribution towards the creation of affordable housing by a developer whether in

kind, or by the payment of a sum of money in lieu thereof by said developer to the neighborhood housing trust; or a combination of such creation and monetary payment; all made in accordance with regulations promulgated by the Boston zoning commission.

"Combined index" - an index which measures the increase in price levels by combining in equal proportions the consumer price index for all urban consumers (CPI-U) (1967=100) and the housing component of said CPI-U for the Boston metropolitan area, as these indices are published from time to time by the bureau of labor statistics, United States department of labor.

"CPI-W" - an index now known as the consumer price index for urban wage earners and clerical workers, all items, for the Boston metropolitan area (1967 = 100) as published from time to time by the bureau of labor statistics, United States department of labor.

"Developer" - the person or entity seeking to create one or more new large-scale commercial real estate developments in the city of Boston.

"Employment exaction" - a contribution by a developer towards the creation of a job training program or programs whether by the creation of such program or the payment of a sum of money in lieu thereof by said developer to the neighborhood jobs trust; or a combination of such creation and monetary payment; all made in accordance with regulations promulgated by the Boston zoning commission.

"Job training programs" - programs designed to enhance the ability of the participants to be qualified to successfully compete for employment opportunities including, without limitation, job training, adult literacy training, employment counseling and associated support services.

"Low and moderate income resident" - A resident, or group of residents all of whom occupy the same dwelling unit as their principal residence, whose total income (i) is no greater than the per cent of the median income for the Boston area set forth in or determined based upon regulations and definitions promulgated from time to time by the United States department of housing and urban development ("HUD") pursuant to section 8 of the housing act of 1937, as amended by the housing and community development act of 1974 and as further amended from time to time, for lower income families or very low income families as defined in such regulations, or any combination thereof as determined by the zoning commission or (ii) is otherwise defined by the Boston zoning commission through its adoption of the definition of any state or federal agency, authority, department or similar instrumentality providing financing, subsidy or other financial assistance to reduce the occupancy cost of housing to low and moderate income residents.

"Neighborhood housing trust" - a Massachusetts public charitable trust created under the authority of this act and the laws of the commonwealth and administered by the collector-treasurer of the city as managing trustee

pursuant to Chapter 7 of the Ordinance of the City of Boston of 1986 and pursuant to a Declaration of Trust dated November 19, 1985.

"Neighborhood jobs trust" - a Massachusetts public charitable trust created under the authority of this act and the laws of the commonwealth and administered by the collector-treasurer of the city as managing trustee.

"New large scale commercial real estate development" - any development in the city of Boston in which development it is proposed to erect a building or structure having a gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet, or to enlarge or extend a building or structure so as to increase its gross floor area (exclusive of all accessory parking garage space) to more than one hundred thousand (100,000) square feet or to substantially rehabilitate a building or structure or portion thereof having, or to have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet which square footage is intended for one or more of the following uses ("exaction uses"): (1) office, (2) retail business or service, (3) institutional or educational, (4) hotel or motel, but not including an apartment hotel or lodging house.

"Substantially rehaboilitate" - to cause alterations or repairs to be made to a building or structure, constituting

the new large-scale commercial real estate development, within any period of twelve (12) months, costing in excess of fifty (50) percent of the assessed value of the building or structure as it appears on the assessment rolls of the city as of the first day of January preceding the date of application for the zoning relief to authorize such alterations or repairs, including, without limitation, conditional use permits, exceptions, zoning map or text amendments or variances, or the date of application for the building permit for for such alterations or repairs, whichever is earlier.

Section 16. Affordable Housing Exaction.

Notwithstanding any provisions of general or special law or rule to the contrary, in the city of Boston the zoning commission is hereby authorized to adopt zoning regulations or amendments thereto for the purpose of mitigating the effects of any new large scale commercial real estate development on the health and welfare of low and moderate income residents of Boston due to the unavailability of affordable housing in the city of Boston. Such regulations shall provide that, with respect to a new large scale commercial real estate development, any relief granted under the provisions of the zoning code, existing or as amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief to contribute an affordable housing exaction, to mitigate the effects which the new large scale

commercial real estate development project may have upon the availability of affordable housing within the city, which action shall be, the contribution towards the creation of affordable housing as determined by the zoning commission pursuant to duly adopted regulation. Affordable housing may be a portion of a housing development which includes residents of mixed income levels.

If the developer chooses to contribute towards the creation of housing in kind, in lieu of making the affordable housing exaction money payments provided for in this section, such affordable housing contribution shall be created in accordance with regulations adopted by the zoning commission which is hereby authorized to delegate to the Boston Redevelopment Authority (BRA) the authority to adopt such housing creation regulations. Such regulations may authorize such contribution by the actual creation of affordable housing, or by the economic participation in such creation, including without limitation, the making of loans, contribution of capital to partnerships, limited partnerships, or joint ventures, or the assignment of the developers' contractual obligations to make the money payments provided for in this section. The economic benefit, if any, of the right to any repayment of such economic participation shall be redirected by the developer, pursuant to the provisions of the housing creation regulations, or, in the absence of such redirection, to the neighborhood housing trust.

The zoning commission shall determine by regulation that the value of the affordable housing exaction shall be measured

on the basis of dollars per square foot devoted to exaction uses in excess of 100,000 square feet of gross floor area devoted to exaction uses (exclusive in both cases of all accessory parking garage space) in the new large scale commercial real estate development project. The developer of any new large scale commercial real estate development project, in lieu of contributing towards the creation of affordable housing referred to in the preceding paragraph, may make a payment or payments of an amount of money equal to the measured value of the affordable housing exaction to the neighborhood housing trust authorized by section twenty of this chapter over a payment period to be established by regulation of the zoning commission, for the purpose of mitigating the impact of new large scale commercial real estate developments.

Such regulations shall provide that the measured value of the affordable housing exaction shall be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to exaction uses, in excess of 100,000 square feet of gross floor area devoted to exaction uses (exclusive in both cases of all accessory parking garage space) of the new large-scale commercial real estate development, as determined by the zoning commission upon written recommendations of the Boston Redevelopment Authority ("BRA"), which recommendations shall include an analysis of the following: (1) economic trends, such as real estate development activity, commercial rents per square foot, employment growth and inflation rates; (2) housing trends measured in terms of vacancy rates for affordable housing available to low and moderate income

residents, and production statistics for new dwelling units; and (3) any other such information which the BRA deems appropriate for consideration; provided that the zoning commission shall be authorized to decrease the measured value of the above affordable housing exaction at any time upon consideration of the factors above; provided that the zoning commission shall not be authorized to set the measured value of the above affordable housing exaction at more than five dollars per square foot of gross floor area devoted to exaction uses in excess of 100,000 square feet devoted to exaction uses; provided further, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the measured value above such five dollar maximum, but any such increase, expressed as a percentage increase of the then applicable maximum per square foot amount, shall not exceed the percent of the increase in the combined index for the prior thirty-six month period. No such increase shall apply to any new large scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority prior to the effective date of such increase or for which an application for a Planned Development Area has been filed with the BRA prior to the effective date of such increase, whichever occurs first. The payment period for the affordable housing exaction shall be the payment period for the housing contribution grant or exaction as set forth in Article 26A of the Boston Zoning Code as of

November 1, 1986 and any such period shall not be altered by subsequent regulation. Any affordable housing exaction payment shall be made to the neighborhood housing trust, as created and administered pursuant to section twenty of this chapter. The zoning commission is authorized to promulgate such regulations or rules as will effectuate the purposes of this section.

Section 17. Employment Exaction

Notwithstanding any provisions of general or special law or rule to the contrary, in the city of Boston the zoning commission is hereby authorized to adopt zoning regulations or amendments thereto for the purpose of mitigating the effects of any new large scale commercial real estate development on the health and welfare of low and moderate income residents of the City of Boston due to the unavailability of employment opportunities for such low and moderate income residents of Boston. Such regulations shall provide that any relief granted under the provisions of the zoning code, existing or as amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief to contribute an employment exaction, to mitigate the effects which the new large scale commercial real estate development project may have upon the availability of jobs for low and moderate income residents within the city, which action shall be the contribution towards the creation of job training programs for the training of low and moderate income residents

of the city as determined by the zoning commission pursuant to duly adopted regulation.

The zoning commission shall determine by regulation that the value of a employment exaction shall be measured on the basis of dollars per square foot devoted to exaction uses in excess of 100,000 square feet of gross floor area devoted to exaction uses (exclusive in both cases of all accessory parking garage space) in the new large scale commercial real estate development project. The developer of any new large scale commercial real estate development project, in lieu of contributing towards the creation of the job training programs or similar activities projects referred to in the preceding paragraph, may make a payment or payments of an amount of money equal to the measured value of the employment exaction to the neighborhood jobs trust authorized by section twenty of this chapter over a payment period to be established by regulation of the zoning commission, for the purpose of mitigating the impact of the new large scale commercial real estate development project.

Such regulations shall provide that the measured value of the employment exaction shall be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to exaction uses in excess of 100,000 square feet devoted to exaction uses (exclusive in both cases of all accessory parking garage space) in the new large scale commercial real estate development, as determined by the zoning commission upon written recommendations of the Boston redevelopment authority ("BRA"), which recommendations shall include an analysis of the

following: (1) economic trends, such as real estate development activity, commercial rents per square foot, employment growth and inflation rates; (2) employment trends such as unemployment rates and statistics on the availability and use of job training programs; and (3) any other such information which the BRA deems appropriate for consideration; provided that the zoning commission shall be authorized to decrease the measured value of the above employment exaction at any time upon consideration of the factors above; provided that the zoning commission shall not be authorized to set the value of the above employment exaction at more than one dollar per square foot of gross floor area devoted to exaction uses in excess of 100,000 square feet devoted to exaction uses; provided further, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the measured value above such one dollar maximum, but any such increase, expressed as a percentage of the then applicable maximum per square foot amount, shall not exceed the percent of increase of CPI-W for the prior thirty-six month period. No such increase shall apply to any new large scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority prior to the effective date of such increase or for which an application for a Planned Development Area has been filed with the BRA prior to the effective date of such increase, whichever occurs first.

The payment period for the employment exaction shall be the payment period for the jobs contribution grant as set forth in Article 26B of the Boston Zoning Code as of November 1, 1986 and shall not be altered by subsequent regulation. Any employment exaction shall be paid into the neighborhood jobs trust as created pursuant to section twenty of this chapter. The zoning commission is authorized to promulgate such regulations or rules, as will effectuate the purpose of this provision.

Section 18. Alternative Regulations

(a) The zoning commission is further authorized to promulgate zoning regulations and amendments thereto for the purpose of mitigating the effects of any new large scale commercial real estate development in the city of Boston on the availability of affordable housing or employment opportunities for low and moderate income residents of Boston; provided that such regulations may not be in force simultaneously with those authorized by sections 16 and 17 of this chapter. Such regulations and amendments may provide that any relief granted under the provisions of the zoning code, existing or amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action or promised action by the developer seeking to create such new large scale commercial real estate development project or obtain such relief to mitigate the effects which the new large scale real commercial estate development may have upon low and moderate income residents of the city as determined by the zoning commission

pursuant to duly adopted regulations. Such regulations or amendments shall state the specific improvements or amenities to be provided as a condition required for the grant of zoning relief and the zoning relief to be granted.

(b) Any such regulations and amendments must provide that (1) the present and future economic burden of any such improvements or amenities shall not exceed the sum of the present value of \$5.00 per square foot paid in equal and annual installments over a seven year period plus the present value of \$1.00 per square foot paid in equal and annual installments over a two year period, each commencing on the date of the issuance of the building permit, for each square foot of gross floor area devoted to exaction uses in excess of 100,000 square feet devoted to exaction uses (exclusive in both cases of all accessory parking garage space) in the new large scale commercial real estate development; provided further that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the maximum per square foot amount but any such increase, expressed as a percentage of the then applicable maximum per square foot amount, shall not exceed the percent increase of the combined index for the prior thirty-six month period and (2) the developer seeking to create such new large scale commercial real estate development shall have the right to make a cash payment equal to such economic burden to a fund designated in such regulations or amendments in lieu of providing any such improvements or amenities. The incorporation herein of a limitation upon the economic burden

of any such condition which may be imposed or agreed upon shall not be construed as mandating the imposition of any particular condition.

Section 19. Ratification of Prior Actions

Notwithstanding any provision of general or special law or rule to the contrary, (a) articles 26, 26A and 26B of the Boston zoning code; (b) all zoning code amendments, zoning map amendments, zoning variances, conditional use permits and zoning exceptions granted or enacted prior to the effective date of any zoning code amendment or zoning commission regulation pursuant to this act and in any way dependent upon, or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which have not been appealed or challenged on the grounds of the invalidity of said articles, or any one of them, in judicial proceedings timely and properly commenced, prior to the enactment of this act or which have been so appealed or challenged in judicial proceedings which have been dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act; (c) all zoning code amendments, zoning map amendments, zoning variances, conditional use permits and zoning exceptions granted or enacted prior to the effective date of any zoning code amendment or zoning commission regulations pursuant to this act and in any way dependent upon or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which have been appealed or challenged on the grounds of the invalidity of said articles, or any of them, in judicial proceedings timely

and properly commenced prior to the enactment of this act and which have not been dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act; (d) any development impact project exactions, development impact project contributions and jobs contribution grants, as those terms are defined in said articles, and agreements for such exactions, contributions and grants related to or dependent upon any of the zoning actions described in clause (b) and (c) above; and (e) any additional actions, zoning variances, conditional use permits and zoning exceptions granted pursuant to, or in connection with, any development contemplated by, any zoning map amendment, zoning code amendment or agreement described in clauses (b), (c) or (d) above, whether or not subsequent to the date of enactment of this act, are hereby ratified, validated and confirmed, insofar as any such amendments, variances, permits, exceptions, exactions, contributions grants, agreements, and other actions may be invalid by reason of any invalidity of said articles or any of the them. Any new large scale commercial real estate development which is the subject of any agreement ratified, validated and confirmed by this section 19, and any additional actions, zoning variances, conditional use permits, zoning exceptions, and zoning code and text amendments ratified, validated and confirmed by this section 19, shall be governed by any such agreement and by the provisions of said Articles 26, 26A and 26B, or any of them, pursuant to which said agreements were made, and shall not be subject to any zoning

regulations or amendments hereafter adopted by the zoning commission pursuant to this act. Notwithstanding the foregoing, no new large scale commercial real estate development shall be subject to the terms and provisions of Sections 26-3(2)(c) of Article 26, Section 26A-3(2)(c) of Article 26A or Section 26B-3(1)(c) of Article 26B of the Boston Zoning Code.

Section 20. Authorization of Trust and Manner of Payment

Any general or special law or rule to the contrary notwithstanding, the city of Boston is hereby authorized to establish, by ordinance, separate funds, to be known as the neighborhood housing trust and the neighborhood jobs trust. Each such fund shall be held in trust by the collector-treasurer under such terms as may heretofore or hereafter be prescribed by ordinance, subject to the approval of the mayor. Each fund shall consist of all payments heretofore or hereafter made by any developer pursuant to sections sixteen, seventeen, eighteen and nineteen other than contributions towards the creation of affordable housing as provided in the second paragraph of Section 16, of this chapter and any funds appropriated to such funds by the city for the purposes set forth in this act and in ordinances regulating such trusts for which appropriations are hereby authorized. Any payments made to such separate funds pursuant to the provisions of this act shall be impressed with the terms of the trusts established under the authority of this section and the ordinances adopted pursuant to this section, and shall be

received by the collector-treasurer and deposited by him in a separate account; provided, however, that with respect to each new large scale commercial real estate development, the total amount of all such payments to be made by a developer to such trusts shall first be accepted by the city council and approved by the mayor, which acceptance shall be deemed a final appropriation of said payments to such trusts. All payments to be made by a developer to such separate funds in respect to a particular new large scale commercial real estate development shall thereupon and thereafter be deposited directly into such trusts and may thereafter be expended by the trustees of said trusts for the purposes authorized by this act, and for no other purpose. All such funds received, accepted or appropriated shall at all times be impressed with the terms of the trusts as defined by this act as regulated by ordinance and shall be dedicated exclusively to the development and operation of affordable housing for low and moderate income residents of Boston or to the development of job training programs for low and moderate income residents of Boston, and for no other purpose. Any trust or fund heretofore established by the city for either of the two purposes described in this act and now existing, and any ordinance passed for the purpose of authorizing the establishment of such trusts or funds passed prior to the effective date of this act including, without limitation, Chapter 7 of the Ordinances of the City of Boston of 1986 and Declaration of Trust of neighborhood housing trust dated November 19, 1985 and any actions taken by the trustees

of said neighborhood housing trust or neighborhood jobs trust prior to the effective date of this act are hereby authorized, validated and confirmed.

Any payments made by a developer of a new large scale commercial real estate development pursuant to Chapter 7 of the Ordinances of the City of Boston of 1986 and the Declaration of Trust of the Neighborhood Housing Trust dated November 19, 1985 before the effective date of any amendment of said Chapter or Declaration of Trust or of any trust or fund hereafter established by the City, in either case pursuant to this act, shall be governed by said Chapter of the Ordinances of 1986 and said Declaration of Trust of November 19, 1985, and shall not be subject to any trust or fund amendments or any new trust or fund hereafter established.

SECTION THREE Appeal Period

Section 665 of the acts of 1956 as amended, is hereby further amended by inserting after section ten the following new section:

Section 10A. Any persons aggrieved by a decision of the zoning commission approving a zoning map amendment or a zoning regulation or amendment thereof, or by any procedural defect therein, or any municipal board or officer, may appeal such decision to the superior court for the county of Suffolk or to the Land Court; provided, that such appeal is filed in said court within thirty days after such decision became effective in accordance with the provisions of section 3 of chapter 665 of the acts of 1956. Upon an appeal under this section, the

court shall hear all pertinent evidence and determine the facts, and, upon the facts as so determined, annul such action if found to exceed the authority of such commission, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

Cost shall not be allowed against said zoning commission unless it shall appear to the court that the commission taking the action appealed from acted with gross negligence, in bad faith or with malice; and costs shall not be allowed against the part appealing from the action of the commission unless it shall appear to the court that said party acted in bad faith or with malice in appealing to the court.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

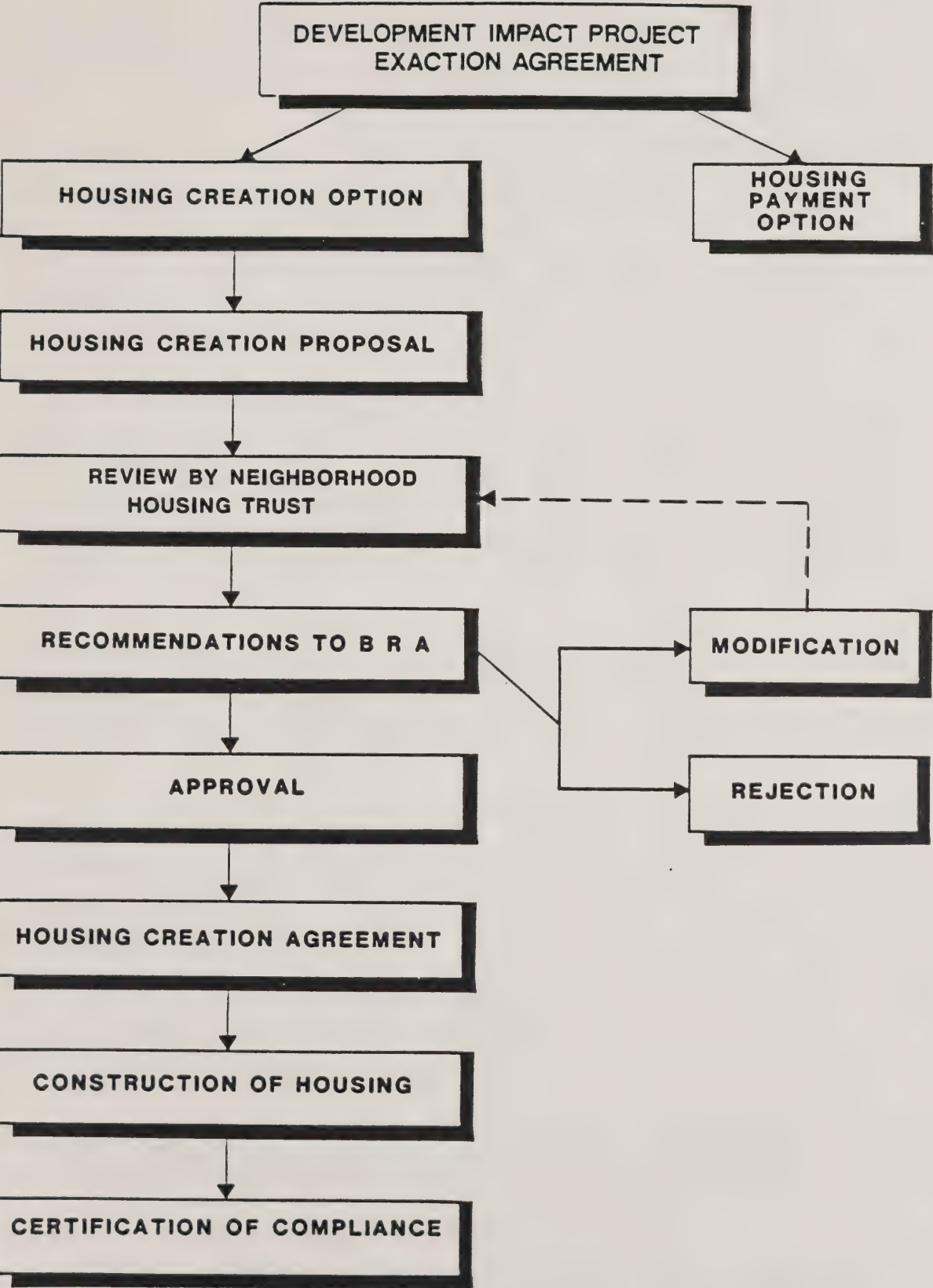
SECTION FOUR. Severability

The provisions of this act and the chapter it amends shall be severable within the act and chapter, and if any one or more provisions, or parts of subparts thereof, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

SECTION FIVE. Effective Date

This act shall take effect upon enactment.

LINKAGE OPTIONS and HOUSING CREATION PROCESS



MEMORANDUM

TAKEN UNDER ADVISEMENT MARCH 6, 1986

RESUBMITTED APRIL 17, 1986

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM L. WHITMAN, ASSISTANT TO THE DIRECTOR

SUBJECT: HOUSING CREATION REGULATIONS

On October 1, 1985 the Authority held a public hearing on a draft of the Housing Creation Regulations proposed for adoption by the Authority pursuant to Section 26-2.3(b) of Article 26 and Section 26A-2.3(a) of Article 26A of the Boston Zoning Code. The Authority distributed the draft Regulations widely prior to the public hearing and continued to receive comments on the Regulations for thirty (30) days following the hearing.

Attached is a report on the comments received, including a transcript of the hearing, copies of all written comments, and revised Regulations proposed for adoption today. Comments were reviewed by staff and incorporated into the revised Regulations where applicable and consistent with the original design of the Regulations.

The majority of people who commented on the draft Regulations spoke strongly of the need for effective and immediate action on the part of the City in addressing Boston's shortage of affordable housing. Many comments were useful in correcting technical problems or addressing oversights. The most significant revisions to the draft Regulations in terms of administrative structure, however, came as a result of comments by and discussions with the Mayor's office and several City Councillors who recommended the substitution of the Neighborhood Housing Trust for the Housing Policy Group. Other significant changes include those to definitions. Together these changes will permit smoother coordination among city and state agencies which administer housing programs.

I recommend, therefore, that the attached Housing Creation Regulations be adopted in order to expedite and facilitate the construction of affordable housing in the City of Boston.

An appropriate vote follows:

VOTED: To adopt and promulgate, pursuant to
Section 26-2.3(b) of Article 26 and
Section 26A-2.3(a) of the Boston Zoning
Code, Housing Creation Regulations in
the form attached hereto.

BOSTON REDEVELOPMENT AUTHORITY
HOUSING CREATION REGULATIONS
PROMULGATED PURSUANT TO ARTICLES 26 & 26A
OF THE BOSTON ZONING CODE
APRIL 17, 1986

Section 1: Scope and Purpose

Articles 26 and 26A of the Boston Zoning Code require Developers of certain projects, known as Development Impact Projects, to contribute Development Impact Project Exactions to help alleviate the shortage of affordable housing in the City of Boston. Developers may elect from two options in order to satisfy their obligations under Articles 26 or 26A: 1) Housing Exaction Payments may be made in equal annual installments (the "Housing Payment Option"), or 2) Developers may create or contribute to the creation of housing affordable to low and moderate income households pursuant to these regulations (the "Housing Creation Option").

Articles 26 and 26A require the Boston Redevelopment Authority to promulgate regulations governing the administration of the Housing Creation Option. These regulations set forth procedures and requirements for Developers who have elected the Housing Creation Option and are intended to encourage Developers to select the Housing Creation Option.

Section 2: Definitions

The following terms, wherever used in these regulations, shall have the following meanings, unless the context clearly requires otherwise:

- (a) "Affordable Housing" shall mean housing, the costs for which shall not exceed a certain percentage of the income of Low or Moderate Income Households, such costs and such percentage to be that set from time to time by the Massachusetts Housing Finance Agency or its successor agency for similiar programs administered by it and shall include specifically and without limitation rooming houses, congregate housing, transitional housing, halfway housing, emergency shelters, cooperatives, condominiums, and single or multi-family dwellings, as determined appropriate, desirable, and feasible by the Neighborhood Housing Trust.

- (b) "Authority" shall mean the Boston Redevelopment Authority, a public body politic and corporate duly organized and existing under Massachusetts General Laws Chapter 121B.
- (c) "CDC" (Community Development Corporation), shall mean a corporation duly organized and existing pursuant to Massachusetts General Laws, Chapter 40F.
- (d) "Certificate of Compliance" shall mean a certificate approved by the Authority which certifies that a Developer has complied with the requirements of a Housing Creation Agreement to which the Developer is a party.
- (e) "Developer" shall mean an individual, corporation, business trust, estate trust, partnership or association, two or more Developers having a joint or common interest, or any other legal or commercial entity subject to Articles 26 or 26A of the Boston Zoning Code.
- (f) "Director" shall mean the Director of the Boston Redevelopment Authority.
- (g) "Housing Creation Option" shall mean the means as set forth in these regulations by which a Developer shall satisfy its obligations under Articles 26 or 26A of the Boston Zoning Code if electing the Housing Creation Exaction Option thereunder.
- (h) "Housing Payment Option" shall mean the means by which a Developer shall pay the amount calculated pursuant to Articles 26 or 26A of the Boston Zoning Code which the Developer is required to pay if electing the Housing Payment Exaction option thereunder.
- (i) "Low Income Household" shall mean a household where the total income of the members thereof at initial occupancy does not exceed fifty percent of the median income for the Boston Standard Metropolitan Statistical Area as set forth in or calculated based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

- (j) "MBE" (Minority Business Enterprise) shall mean a business organization which has been certified as a Minority Business Enterprise by the Mayor's Office of Jobs and Community Service.
- (k) "Moderate Income Household" shall mean a household where the total income of the members thereof at initial occupancy does not exceed eighty percent (80%) of the median income for the Boston Standard Metropolitan Statistical Area as set forth in or calculated based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.
- (l) "Neighborhood Housing Trust" shall mean the Massachusetts charitable trust to be created pursuant to the Special Statutes and Ordinances of the City of Boston. The Trust will administer funds received by means of the Housing Payment Exaction requirement for Development Impact Projects.
- (m) "Net Present Value" shall mean the value of an amount of money equal to the sum of discounted payments which would have been made by the Developer had it elected to satisfy its obligations under Articles 26 or 26A of the Boston Zoning Code through the Housing Payment Option, such discounting to be measured from the date at which the Developer enters into a Housing Creation Agreement with the Authority to the dates at which each Housing Payment installment payment would have been made.
- (n) "Seed Money" shall mean money placed in a revolving fund to be administered by the Neighborhood Housing Trust for low-interest loans to MBE's, CDC's, or other for-profit or non-profit organizations for the purpose of encouraging the housing creation activities contemplated by these regulations.

Section 3: Housing Creation Options

A Developer who elects to satisfy its obligation under Articles 26 or 26A of the Boston Zoning Code through the Housing Creation Option may propose, in accordance with the requirements of these Regulations, that it fulfill all or any part of its obligation by methods such as but not limited to the following:

- (a) Directly creating, through new construction, acquisition/rehabilitation or purchase, Affordable Housing:

Example: A Developer having a linkage obligation of \$500,000 (Net Present Value), acquires and constructs 15 townhouse family housing units at a total cost of \$1,200,000. The units are then sold subject to resale restrictions to low and moderate income home buyers at prices totaling \$700,000. The Developer has underwritten the housing so produced to the extent of the linkage obligation.

or

- (b) Forming a joint venture, general or limited partnership or similar corporate relationship with an MBE, CDC, or for-profit or non-profit organization for the creation of Affordable Housing. The Developer shall ensure that any joint venturer, co-developer or partner of the Developer's shall become a party to the Housing Creation Agreement required pursuant to Section 9 hereof and be bound thereby;

Example: The Developer invests its \$500,000 linkage obligation (Net Present Value) as a partner in an entity formed to build and operate a rental housing development of which a qualifying MBE, CDC or for-profit or non-profit organization is the controlling general partner. This equity permits the general partner to obtain project financing. Assigned to the Neighborhood Housing Trust are all cash dividends and all proceeds due from sale, resyndication or refinancing of the project up to the amount of the Net Present Value of the Developer's linkage obligation, plus interest.

or

- (c) Contributing the Net Present Value of the payments which would have been made under the Housing Payment Option to an entity designated by the Developer and approved by the Authority, which entity shall be responsible for the construction

and operation of Affordable Housing. The Developer shall ensure that any entity so designated and approved shall become a party to the Housing Creation Agreement required pursuant to Section 9 hereof and be bound thereby.

Example: The Developer loans \$500,000 on favorable terms to an MBE, CDC or for-profit or non-profit housing producer as primary or subordinated permanent project financing, for the housing producer to use for the purchase of a subsidy annuity, or for such other purpose as may be necessary to the production of Affordable Housing. As the interest rate is well below market rates, affordable rental or equity housing is produced. The Developer assigns its interest in the Loan to the Neighborhood Housing Trust, thus discharging its linkage obligation.

or

- (d) Selecting any of the options above or any combination of the options above in full or partial satisfaction of its obligations under Articles 26 or 26A.

Example: The Developer, wishing to satisfy half of its linkage obligation currently and electing to pay the remainder over 12 years, invests \$250,000 as a limited partner in a new housing development sponsored by an MBE, CDC or for-profit or non-profit organization. The remaining linkage obligation is satisfied pro rata according to the requirements of the Housing Payment Option.

Section 4: Housing Creation Proposal Review Criteria

All proposals shall be evaluated according to criteria which shall include but not be limited to the following:

- (a) provide equity (ownership) opportunities for Low and Moderate Income Households;
- (b) maximize the number of units of housing available to Low and Moderate Income Households;

- (c) maximize the term of occupancy for Low and Moderate Income Households; and
- (d) cause the improvement of blighted areas in the City.

Section 5: Satisfaction of Linkage Obligation; Equivalent Value

The Developer's obligations under Articles 26 or 26A shall be satisfied under Section 3 if and only if the amount of the Developer's contribution under any of the options set forth in Section 3 is equal to the Net Present Value of the payments that would have been made by the Developer had it elected the Housing Payment Option. Net Present Value shall be determined by applying a composite discount rate to the payments that the Developer would have made under the Housing Payment Option. The discount rate shall be calculated by adding fifty percent of the Developer's verified cost of funds for the construction of its Development Impact Project to fifty percent of the current most recent City of Boston long-term (ten year) municipal bond yield.

Section 6: Housing Creation Proposal

A Developer electing the Housing Creation Option shall submit a proposal setting forth the Developer's plan for creating Affordable Housing which would not have been built but for the Developer's contribution. The proposal shall comply with the submission requirements set forth in the Development Review Procedures as published by the Authority from time to time and shall contain such other information as the Director and the Neighborhood Housing Trust may require.

Section 7: Review by Neighborhood Housing Trust

The Director shall submit the proposal to the Neighborhood Housing Trust immediately upon receipt thereof. The Neighborhood Housing Trust shall review the overall appropriateness of the proposal and shall recommend to the Authority approval, with or without conditions, or denial of each proposal within forty-five (45) calendar days of receipt thereof.

Section 8: Proposal Approval

Upon completion of review of the proposal by the Neighborhood Housing Trust and the Authority or upon the expiration of the above-mentioned forty-five day review period, the Authority after public notice and hearing shall take final

action on the Developer's housing creation proposal and shall promptly notify the Developer of its action in writing.

Section 9: Housing Creation Agreement

Upon approval of the proposal by the Authority, the Director and the Developer shall enter into an agreement ("Housing Creation Agreement") which shall be in a format prescribed by the Authority and contain such provisions as the Director and the Neighborhood Housing Trust determine necessary to ensure the completion of the project in accordance with the Developer's proposal as approved by the Authority.

Section 10: Certificate of Compliance

Upon satisfactory performance of its obligations under the terms of the Housing Creation Agreement and if so requested by the Developer, the Authority shall issue to the Developer a Certificate of Compliance.

Section 11: Seed Money Loans

If a Developer selects the option set forth in Section 3(c), up to five percent (5%) of the Developer's contribution shall be set aside and placed in a seed money revolving fund to be administered by the Neighborhood Housing Trust. Such funds may be loaned to MBE's, CDC's or other for-profit or non-profit organizations for the purpose of encouraging the housing creation activities contemplated by these regulations. The interest rates on such loans shall be equal to fifty percent (50%) of the City of Boston current long-term (ten year) municipal bond yield.

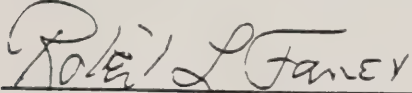
Section 12: Section Headings

The captions to the sections used throughout these Regulations are intended solely to facilitate the reading of and reference to the sections and provisions of these Regulations. The captions shall not affect the meaning or interpretation of these Regulations.

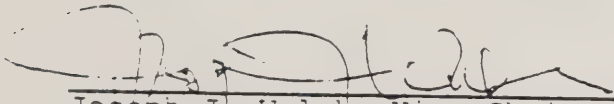
Section 13: Severability

If any provision or section of these Regulations shall be held to be invalid by a court of competent jurisdiction, such provision or section shall be deemed to be separate and apart from the remaining provisions or sections of these Regulations and such remaining provisions or sections shall continue in full force and effect.

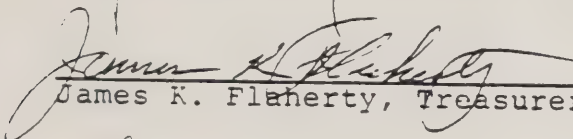
Approved and voted this 17th day of April, 1986.



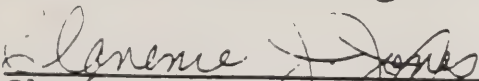
Robert L. Farrell, Chairman




Joseph J. Walsh, Vice-Chairman



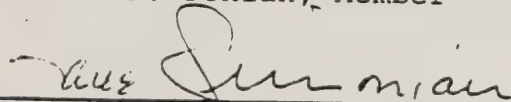
James K. Flaherty, Treasurer



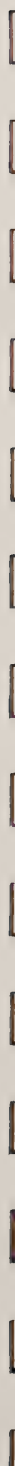
Clarence J. Jones, Assistant Treasurer



Michael F. Donlan, Member



Kane Simonian, Secretary



Tapping Private Resources

More and more cities are linking the right to develop projects in booming downtown areas to requirements to contribute to social programs for poorer neighborhoods.

BY CAROL STEINBACH

Say goodbye to the Great Society and hello to the Age of Linkage.

Even as national attention spotlights mayors' laments over vanishing federal urban aid, a growing number of cities have discovered a new treasure trove for social programs: downtown developers. More and more cities are "linking" approval of developers' plans to their agreeing to help finance urban social programs. It's the cities' attempt to share the profits of their prospering sectors with their poor.

Until a few years ago, only a few growth cities with aggressive mayors and petulant neighborhood groups pursued linkage. But today, the movement is spreading rapidly—from San Francisco to Richmond, Va., from Boston to Shreveport, La. Dozens of cities are flexing their muscles, forcing builders to contribute to efforts to create housing, jobs, training, child care and even cultural amenities for the poor.

No mayor contends that linkage will solve deep-seated urban poverty or recapture, in dollar terms, anything more than a smidgen of lost federal aid. "But it sure as hell beats just sitting on your hands and complaining," said Boston Mayor Raymond L. Flynn.

Downtown builders are the most visible early target of emerging city strategies to tap private resources for urban needs. Mayors stress that linkage is not a throwback to the antibusiness sentiment that prevailed in some cities during the 1960s. Quite the contrary, they say; for linkage to work, the private sector must be prospering.

Nonetheless, many developers are skeptical, some openly hostile. A few have challenged linkage measures in court. Amid cries of "public interest extortion," some developers assert that



Developers are tripping over themselves to develop downtown Boston.

heavy-handedness by the cities threatens urban revival.

Still, there's no evidence yet that builders are passing up opportunities for profits because of linkage. Begrudgingly, most developers are accepting the practice as a cost of doing business in a city.

Linkage comes in all shapes and sizes, depending on a city's economy and special needs, its political style and the creativity of the mayor and urban planning officials. Some cities wield a heavy stick, but most couple their social requirements with various carrots. Sometimes, the concessions are demanded only of developers who benefit from tax and financing incentives or use city land; other cities apply the requirements to all developers who want to build in certain areas of the city. Generally, the more attractive the project from the developer's point of view, the more likely it is that the city will try to secure some wider social benefit.

The most publicized—and controversial—linkage policies are "exactions." These city laws require developers to pay for social needs as a quid pro quo of building approval, usually by assessing square footage fees that go into city trust funds for housing and other programs.

But most cities have eschewed exactions in favor of another form of linkage—"negotiated development." Typically, city officials sit down with builders before their projects are undertaken and hammer out social concessions. Sometimes, cities even reward "socially conscious" builders with expedited permit approval or more liberal height, density and other zoning specifications.

In negotiated development, virtually any city need is fair game for barter. Shreveport, for instance, commonly swaps low-interest public financing for commitments to hire the unemployed and, in one instance, agreed to run a



Richard H. Bradley of the International Downtown Association
Cities need to extend linkage beyond developers to the entire business sector.

sewer line to a chicken nuggets firm in exchange for the company's promise to hire low and moderate-income workers for half its jobs. San Antonio, Texas, negotiated with the builders of a downtown Hyatt Hotel to give a percentage of the equity to an Hispanic community group. Hartford, Conn., has exchanged tax incentives for a share of developers' profits and in one case, exchanged tax breaks for ownership of the land on which a project was built and eventual ownership of the buildings themselves. Los Angeles even traded the rights to construct a \$1.9 billion office-commercial complex for a new art museum to be built by the developers.

"The philosophy is simple," Flynn said. "We have to be sure the growth of downtown is shared with people who have traditionally been left behind. We're still seeking growth," he added, "but with justice."

GROWING PHENOMENON

While federal spending cutbacks have ignited the linkage movement nationwide, in many communities the spark has come from neighborhood groups. They complain bitterly that downtown growth never trickles down to poor neighborhoods festering in the shadows of shiny new downtown complexes.

Minority leaders, too, have pressed hard for linkage, among them former Richmond Mayor Henry L. Marsh, Boston City Council president Bruce C. Bolling, Washington (D.C.) Mayor Marion S. Barry, Miami Mayor Xavier L. Suarez, Chicago Mayor Harold Washington, San Antonio Mayor Henry G. Cisneros, Detroit Mayor Coleman A. Young and Atlanta Mayor Andrew Young.

"Boston has one of the strongest economies in the world, but it's like Dickens's *A Tale of Two Cities*," Bolling said. "It's

the best of times—unprecedented growth, developers tripping all over themselves to develop in Boston. Yet it's also the worst of times—working-class neighborhoods have literally been bypassed."

Few cities have embraced linkage as aggressively as Boston has. (See box, p. 995.) Other cities in the forefront of the movement include Hartford, Miami, San Francisco, Santa Monica, Calif., and Seattle.

Even cities with slow or stagnant growth, such as Detroit and Philadelphia, are carefully using linkage to help ensure that minorities and city dwellers share in the jobs created by downtown growth.

Philadelphia is among cities that have negotiated "first-source contracts" with builders who benefit from public development incentives. These commit the developer to go through the city employment department when recruiting workers for all entry-level permanent jobs in the new complexes and, in some cases, commit the tenants to do the same thing. The same device has been used in Dallas, Denver, Little Rock, Ark., Miami, Pittsburgh, Portland, Ore., St. Louis, St. Paul, Minn., and Washington, D.C.

In Detroit, as well as in Atlanta, Boston, Washington, D.C., and a few other cities, ordinances require all developers who accept city contracts or public financing assistance to hire a percentage of city residents, minorities and women to work on the projects.

"Every city is going to weave its own cloth," said Steven Coyle, director of the Boston Redevelopment Authority. "The key is for a community to recognize its unique strengths and powers that can be used as bargaining chips. . . . Even in the era of New Federalism, even in the climate of Gramm-Rudman, cities still set the rules for growth. It's important for cities to expand the development debate

beyond height, mass, use of building and access to roadways."

Until the late 1970s, city dealings with builders focused almost exclusively on those physical aspects of development. Since World War II, developers have had to help finance sidewalks, streets, schools and parks in new subdivisions. By the late 1960s, many cities had begun negotiating with builders for design considerations and amenities—open spaces, tree-lined plazas, arcades.

The linkages became more socially oriented during the Carter Administration under the Housing and Urban Development Department's (HUD) administration of the urban development action grant program (UDAG). The program requires public-private partnerships in the projects that it finances. "HUD made it clear to cities that how well they linked [neighborhood development with] big downtown development projects would be a factor upon which competing UDAG applications would be judged," said Richard C.D. Fleming, former HUD deputy assistant secretary for community development.

But even as cities were learning to barter with builders, exactions were making headlines. Since 1981, Santa Monica has required large developers to contribute to a housing fund. Since 1981, San Francisco office builders have been required, as a condition of building downtown, to build or restore city housing or pay \$5 per square foot (for every square foot over 50,000 in their complexes) to a city housing trust fund. They're also obligated to contribute to transit, cultural and child care programs. In Boston, the square-foot fees assessed on office and commercial developments go into housing and job training funds.

Recently, however, developers have blocked similar exaction measures in several cities. Mayor Washington's 1984 plan to slap a square-foot fee on Chicago builders for a neighborhood trust fund went nowhere. A similar plan was stymied in New York City. In Seattle and Hartford, developers raised such an uproar over proposed fees for housing funds that both cities opted instead for another type of linkage known as incentive zoning. The size of developers' projects in both these cities—as well as in Miami—are determined by the developers' commitments to housing, child care and other social programs.

Several cities are applying linkage policies to banks and other businesses. In Boston, for instance, the developer exactions apply to hospital construction and expansion. And earlier this year, Washington, D.C., began requiring banks outside the metropolitan region that want to acquire a District bank to establish two

Two Booming Cities, Two Approaches

Boston, with its booming growth, Yankee ingenuity and strong neighborhood groups, has embraced mandatory linkage policies with a vengeance. Genteel Richmond, Va., on the other hand, has relied on voluntary agreements to win benefits for minorities from downtown developers.

Large developers in Boston already must contribute to the city's housing and job training funds and reserve jobs on their projects for city residents, minorities and women. Now the city has launched a \$500-million plan to link development of the prosperous downtown with a major economic and social revival of the city's most distressed neighborhood—Roxbury.

Since 1984, there have been nine million square feet of new development in Boston, adding 24,000 new jobs. Expanding high-technology, health and service industries have sparked a city population increase for the first time in three decades.

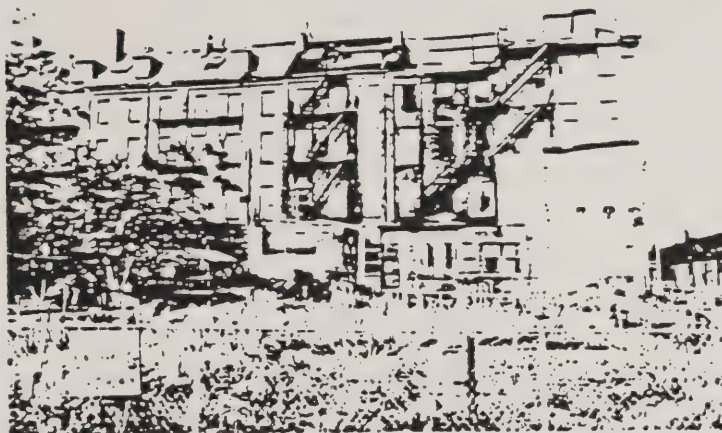
Yet in Roxbury, 15 minutes from downtown, the unemployment, crime, school dropout and welfare dependency rates are among the highest in the nation. In 1984, United Press International ranked Roxbury's major commercial strip, Blue Hill Avenue, as one of the 10 worst streets in America.

The city and the state have committed almost \$1 billion to rekindle Roxbury's economy, including a mass transit station, a new park system and a new campus for Roxbury Community College. But private development efforts have been minimal.

Enter linkages. The city and the state hold the title to 5.6 barren acres in Roxbury—parcel 18, which was razed for an expressway that environmentalists blocked a decade ago. In downtown Boston, the city owns the Kingston-Bedford parking lot on prime acreage between the financial and retail districts. Last July, Mayor Raymond L. Flynn said the city would sell the Kingston parcel for half of its \$40 million value. But the "lucky" developer would have to build a major commercial and residential complex on Roxbury's parcel 18 as well. (The developer must also agree to give at least 25 per cent ownership of both projects to minority partners and reserve 30 per cent of the engineering, legal, architectural and other contracts for minority firms.)

"We're out to rebuild an entire neighborhood economy," said Steven Coyle, director of the Boston Redevelopment Authority.

The city's plan for parcel 18 calls for housing, retail and office development. Boston banks, law firms and big cor-



Boston wants to rebuild the Roxbury neighborhood.

porations could use the space for "back office" functions—processing checks, bills and credit cards—which employ a lot of clerical workers.

But officials concluded that neither cheap land downtown nor the supposed advantage of the Roxbury parcel—ample space close to downtown—was enough to snare a cost-conscious developer. And so, the city and state have offered \$115 million

in public subsidies for the two projects, ranging from creative financing to free engineering and site clearance. They've promised to expedite all needed permits and have zoned the Kingston parcel for a 500-foot skyscraper. To quell developers' fears that no anchor tenant would go to Roxbury, the city and state have pledged to help finance a new cultural center and to finance in full a job training program to prepare Roxbury residents for the 5,000 jobs the city hopes the developers' project will generate.

Richmond's boom can't quite match Boston's, but the transformation of this old Confederate capital is still startling: \$2 billion in downtown development recently completed or under way—including new banks, corporate headquarters, office towers, a baseball field, hotels, condominiums, renovated antebellum tobacco warehouses and a new convention center.

"There's so much boom, you can't find a plumber to fix your john," said T. Justin Moore Jr., co-founder of Richmond Renaissance, the biracial public-private corporation created in 1982 to catalyze downtown development. (See *NJ*, 3/29/86, p. 779.)

The new 6th Street Marketplace, built by James W. Rouse, is the focal point for Richmond's revival—and a prime example of negotiated linkage. City officials negotiated a 10-page contract with Rouse setting forth goals for minority involvement in every aspect of the marketplace—architecture, engineering, construction, leasing and employment.

Rouse agreed that at least 15 per cent of the shops would be reserved for minority entrepreneurs. City officials persuaded the business schools at two local universities to sponsor an intensive, 30-week training program for potential minority tenants, and the five banks financing the marketplace were induced to set up a \$1.2 million market-rate loan pool for the enterprises.

"All the minority goals were met or exceeded," said Richmond Renaissance co-director, J. Randall Evans. "The marketplace is supporting many black merchants who've never been in business before, and these aren't businesses in the ghetto that are destined to fail."

branches in poor neighborhoods, provide up to \$100 million in loans to city sponsored-projects, create up to 200 jobs and sell food stamps. In New York City, the Mount Sinai Medical Center won approval for a hospital modernization project, but only after agreeing to provide substantial medical and administrative help to the North General Hospital in Harlem. And Philadelphia recently negotiated a first-source hiring agreement with a local bank, the Fidelity Corp.

BUSINESS REACTION

Many developers are skeptical of city efforts to negotiate social concessions from them and are downright angry about exactions.

"Developers know they have to help meet social needs, if not out of altruism, out of self-protection," said Richard Gordon, a Hartford developer. "But once you cross the line from voluntary efforts to mandatory, you run into problems." Gordon believes linkage advocates in Hartford are jeopardizing corporate good will. "They'd rather trade the \$10.5 million the business community gives voluntarily for \$2.5 million they could raise through a \$1-a-square-foot exaction on new development," he said.

Late last year, Boston developer Jerome L. Rappoport challenged Boston's housing exactions in court, arguing that they were "inefficient, counterproductive and an illegal tax." On April 4, a Massachusetts lower court held in Rappoport's favor, ruling that Boston had indeed overstepped its taxing authority. The city is appealing the decision and, if necessary, will seek state legislation to empower Boston to levy exactions.

Linkages are being challenged in other cities, too, but so far, few cases have been decided. "The law is pretty new in this area," said Susan E. Haar, special counsel for the Boston Redevelopment Authority. But to the extent linkage falls in the general category of zoning, she said, "courts have tended to rule in favor of local governments' broad latitude to do what's best for the good of the community, so long as the cities proceed in a way that's fair and rational."

But other lawyers say several cities may be exceeding their statutory powers in adopting linkage measures. And they believe courts are going to force the linkages to pass what's known as a rational nexus test, under which the city must show a direct connection between the developers' projects and the concessions. Cities requiring contributions to a housing fund, for instance, would have to prove that new office buildings eroded the supply of housing in the city or created substantial demand for new units.

So far, most developers have not chal-

lenged city linkage programs. They've preferred to cooperate rather than "antagonize local officials and risk the uncertainties and 'bad blood' inevitably associated with litigation," said John J. Griffin, a Boston lawyer.

Nor, it appears, have linkages set off a stampede to the suburbs. Boston officials report that despite their exactions, the city last year set a record for new development. "There is no evidence the golden goose has even had its feathers ruffled, much less been killed, so far," said W. Dennis Keating, an expert on linkage



Boston Mayor Raymond L. Flynn
It beats sitting on your hands.

policies who teaches at Cleveland State University. His 1985 survey of San Francisco developers revealed that most rated the city's multiple exactions as a factor but not a "very important" one in deciding whether to build in the city.

One reason is that suburbs are also resorting to exactions, occasionally for low-income housing and other social needs, but more commonly to finance roads, sewers and fire and police protection. An increasing percentage of the billions spent each year on suburban infrastructure across the country is financed directly by developers as a condition for zoning clearances and building permits.

Linkage advocates also say that the cost to developers is not that great. Hiring quotas cost developers little or nothing because they must employ workers anyway, and the cities frequently pay for training. Contributions for housing, transit, child care and cultural activities do impose added costs, but apparently some of that is borne by others. Half the developers in Keating's survey said that they

would pass on all the exaction costs to commercial tenants and customers.

The financial benefits to the cities also may not be great. The 13 developments that so far have been subject to Boston's housing exaction are expected to generate \$35 million over 12 years. "clearly a rather meager funding source given housing costs," council president Bolling said. At that level, the fee would finance about 300 rehabilitated homes and 60 new ones annually; city officials say Boston needs at least 3,400 more housing units immediately to ease housing pressures.

Weak enforcement of some linkage policies has also limited their benefits in some cities. And some developers have found ways to circumvent vaguely written linkage provisions.

Some skeptics warn that whatever the benefits of linkages, cities may be moving too fast in embracing them. A downturn in the economy will slow downtown development, they say, and linkage policies could become a critical factor in developers' decisions to forgo construction. Boston officials admit that if a single planned downtown office project were killed because of exactions and not replaced by another project, the lost property tax revenues would exceed the money raised annually through linkage fees.

Despite the kinks, mayors are still high on the linkage strategy. They say the relatively meager dollars raised through linkages can be used as crucial "leverage" to attract the private sector to ventures that were once federally funded, such as low-cost housing. And they say that minority set-asides and job guarantees have given a leg up on the ladder to some who would remain jobless or would never start an enterprise.

More important, linkage policies force cities to search within their own borders for money to finance social programs at a time when federal money is diminishing. Whether through exactions, negotiations or bottom-line rewards, linkage is an attempt to involve the private sector more explicitly as an urban partner.

And, says Flynn, many developers really do want to contribute: "Many conservative businessmen are taking a stronger interest in the social climate of our city because of linkages. They want to be part of the solution of helping the poor and disadvantaged," he said.

"Negotiated linkage makes incredible sense," said Richard H. Bradley, president of the International Downtown Association in Washington. But Bradley worries that cities relying heavily on developers are putting too many eggs in a fragile basket. "What cities need to do now," he said, "is extend linkage beyond just the developer community to the entire business sector." □

Flynn would tie linkage fee to jobs plan

By Michael K. Frisby
Globe Staff

Mayor Flynn, in an effort to expand Boston's linkage program, is proposing zoning changes that would establish the nation's first job-training program financed by linkage fee payments and make developers increase and speed up payment of such fees.

Flynn wants to change the city's two-year-old linkage formula, which requires developers to build low- to moderate-income housing or to pay into a housing trust \$5 per square foot of construction on projects exceeding 100,000 square feet.

Under Flynn's proposals, in the form of zoning ordinances that must first be approved by the Zoning Commission, the payments would be increased by \$1 per square foot and the current 12-year payment period would be reduced to seven years.

Two years ago, under former Mayor Kevin H. White's administration, the city adopted the linkage concept as a method of sharing the wealth derived from downtown development with the city's neighborhoods.

Flynn, who campaigned two years ago on the promise that he would help the neighborhoods, said yesterday he will not only seek to shorten the linkage payment period, but will also require developers to start payments when construction begins rather than when the buildings are completed, as is now required. In addition, the extra dollar per square

KEY ELEMENTS

Following are the major points of the mayor's proposal:

- Increase linkage payments to \$6 per square foot, from \$5, on construction projects exceeding 100,000 square feet.

- Reduce the payment period to seven years, from 12.

- Require that payments begin at the start of construction, rather than when the buildings are completed.

- Establish the nation's first linkage-financed job-training plan.

foot to be used to finance a job-training program must be paid over two years.

Flynn last night called the proposed changes "very important because there is major economic development in the downtown area and it is important that it is shared with the neighborhoods."

"We want to expand job training and opportunities to the people who have been previously left behind," he said, adding that his proposal may not meet with approval from all the housing activists or the developers.

"Policy decisions don't always have the approval of everyone," said Flynn. "They must be decisive and be for the good of the city."

LINKAGE, Page 13

■ LINKAGE

Continued from Page 1

These proposals will continue economic growth and benefit the neighborhoods."

Limited exemption

Flynn wants to spark neighborhood construction projects and, to that end, his proposals to alter the linkage formula exempt developers who choose to build in the neighborhoods by allowing them to pay linkage fees on the current 12-year schedule, although they will have to pay the extra dollar toward job training.

Flynn also seeks to set aside at least 20 percent of the linkage payments raised from neighborhood development for housing initiatives and job training for the specific neighborhood surrounding the site of the construction project.

Neil Sullivan, the city's policy director, said a major benefit of the changes proposed by Flynn will be the increase in the present value of the linkage payments.

Sullivan said if the city follows through on plans to borrow against the current schedule of linkage payments, financial institutions will lend the city an amount based on about \$2.50 per square foot. But, he said, that loan

amount would increase to \$5 per square foot under the proposed changes.

Flynn's proposals seemed to receive a lukewarm reception yesterday from housing activists, who have lobbied for more extensive changes, and developers, who had previously contended that the changes may be too costly.

Coalition concerned

The Boston Linkage Action Coalition, a group of several housing organizations, has called on Flynn to increase linkage payments to \$10 per square foot and eliminate the exemption for projects under 100,000 square feet.

Yesterday, Evelyn Hannigan, a coalition cochairwoman, said organization members had a good relationship with Flynn, but are concerned because they had been promised a meeting with the mayor to discuss their own linkage proposals. Such a meeting has not taken place, she said.

"We do not accept this as a final position" on linkage, said Hannigan. "We will press for an immediate meeting with the mayor to discuss linkage. We were promised a meeting, but it never happened."

Flynn acknowledged that he had not met with the housing activists, but said a member of his administration had talked with them over the weekend.

Meanwhile, some developers, such as John T. Fallon, chairman of R. M. Bradley Co., have supported linkage with reservations. Fallon has previously said that it would be difficult for developers to begin making their payments at the start of construction.

Sullivan, however, maintained that "the program will benefit the neighborhoods and also sustain downtown development by not overbuilding like other American cities."

Sullivan said the job-training section was suggested by developers who wanted the city to find a way to train members of minority groups, city residents and women to work on the construction projects.

He said the proposals contain a provision allowing the city to respond to changes in the economy and further alter the linkage formula after three years.

Housing trust named

Yesterday, Flynn also named a three-member housing trust board to review proposals by developers wanting to build houses rather than make linkage payments and to allocate linkage money to be spent on housing.

Flynn named Collector-Treasurer George Russell Jr., District Councilor Thomas M. Menino (Hyde Park-Roslindale) and Larry Dwyer, director of the community schools program, to the board.

Meanwhile, Sullivan cautioned that linkage funds are not as much as some activists believe and must be managed properly to have a significant impact on the city's housing stock.

"If the \$35 million from the 10 downtown developments was used for housing construction, it would provide only 500 units of affordable housing," said Sullivan. He said the money would be better used in combination with other funds - public and private - that would produce more housing.

Developers await Flynn's linkage changes

By Michael K. Frisby
Globe Staff

In many suburban communities after a housing development is completed or an apartment complex is built, the developer often has to contribute money toward a new school, construct special access roads or donate recreation land to the community as a means of helping that city or town meet the demands on services caused by the project.

As the downtown areas of Boston and other major cities have become prime locations for office building development, these cities, like their suburban neighbors, also have found ways to extract payments from developers.

In the suburbs, the process is called "subdivision extractions" and often receives little notice. It is called "linkage" in the cities, and here in Boston it is a controversial issue.

This week developers from across the nation will be closely watching events in Boston as Mayor Flynn announces his long-expected changes in the city's linkage formula, already considered one of the most innovative in the country.

His announcement will come at a time when developers nationwide appear to be growing weary of linkage and are beginning to challenge its legality in the courts.

Edith M. Netter, an associate director of the Boston Redevelopment Authority, said the process born in the suburbs has moved to the cities because of new economic conditions evolving in places like Boston.

"We have Proposition 2½, which limits the taxes that can be levied. There is a job crisis and a housing crisis but a strong development market," said Netter, a nationally respected expert on linkage and subdivision extractions.

San Francisco, said Netter, initiated linkage five years ago when it adopted regulations saying developers had to restore housing units or make cash payments - decided on a case-by-case basis - toward housing construction.

Since then, various forms of linkage have been adopted in Seattle, Miami and Hartford, but their regulations allow developers an option to increase the scale of their developments in exchange for funds to be used for new housing. Linkage with a

set payment formula has been enacted Princeton, N. J.

Two years ago, as the concept of downtown developers sharing their wealth with neighborhoods emerged as a major issue in the Boston mayoral campaign, former Mayor Kevin H. White had the city's Zoning Commission approve a linkage formula requiring developers to either pay \$5 per square foot of development over 100,000 square feet into a housing trust fund during a 12-year period or to construct housing.

The funds, to be placed in a housing trust that has yet to be established by the city, are to be spent on increasing the city's affordable and low-income housing stock.

But administration officials say Flynn has found flaws in the process and will announce sometime this week that the payment period will be reduced to seven years. The amount paid by developers will be increased and some funds will be spent on

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Developers awaiting Hub linkage changes

LINKAGE

Continued from Page 17

job training for city residents, minorities and women.

"The biggest flaw - that can only be partially addressed - is the delay in payments," said Neil Sullivan, the city's policy director. He added that it will be sometime before the city will receive funds from projects approved under the current formula.

What will be watched closely are the reactions from developers concerned about the possible impact on future development in the city and from housing activists who have lobbied for more radical changes than those likely to be announced by Flynn.

Last week, Evelyn Hannigan, a cochairperson of the Boston Linkage Action Coalition, said the organization wants Flynn to increase the linkage payment to \$10 per square foot, force developers to pay it before beginning construction, eliminate the exemption for projects under 100,000 square feet and force developers of luxury housing projects to also pay linkage.

"We feel this is reasonable," said Hannigan. "They (developers) come and take from our city. The city is being destroyed by high-rises. They have to give something back to the people who went through the hard times."

Hannigan contended that the increased linkage is needed to construct affordable homes so the city does not become a place where only the gentry and rich can live. "It is a moral issue," she said, "but developers don't see things in moral terms. They just see the money."

Some local developers, however, seem willing to give something back to the city and support linkage, although they are concerned about changes that may be made by Flynn.

John T. Fallon, chairman of R.B. Bradley Company, said linkage is appropriate and works but it would be difficult for developers to pay the money before construction.

"Anything paid up front is negative cash for developers," said Fallon. "If you had linkage at

an early state, it could be burdensome. The key to increased linkage payments is to get more developers."

Donald Chiofaro, who will pay the city nearly \$8 million in linkage fees for constructing International Place, said linkage is actually a tax levied on downtown development, but he said it is essential for Boston.

"I build office buildings in downtown and the better downtown and the city work, the better my investment works," said Chiofaro. He added that linkage funds will help create housing and job training that will improve the city.

Chiofaro, like other developers, warned that it is possible for the city to hamper development with too much linkage. He said Boston is a good office market now but would become less attractive if developers become overburdened with costs.

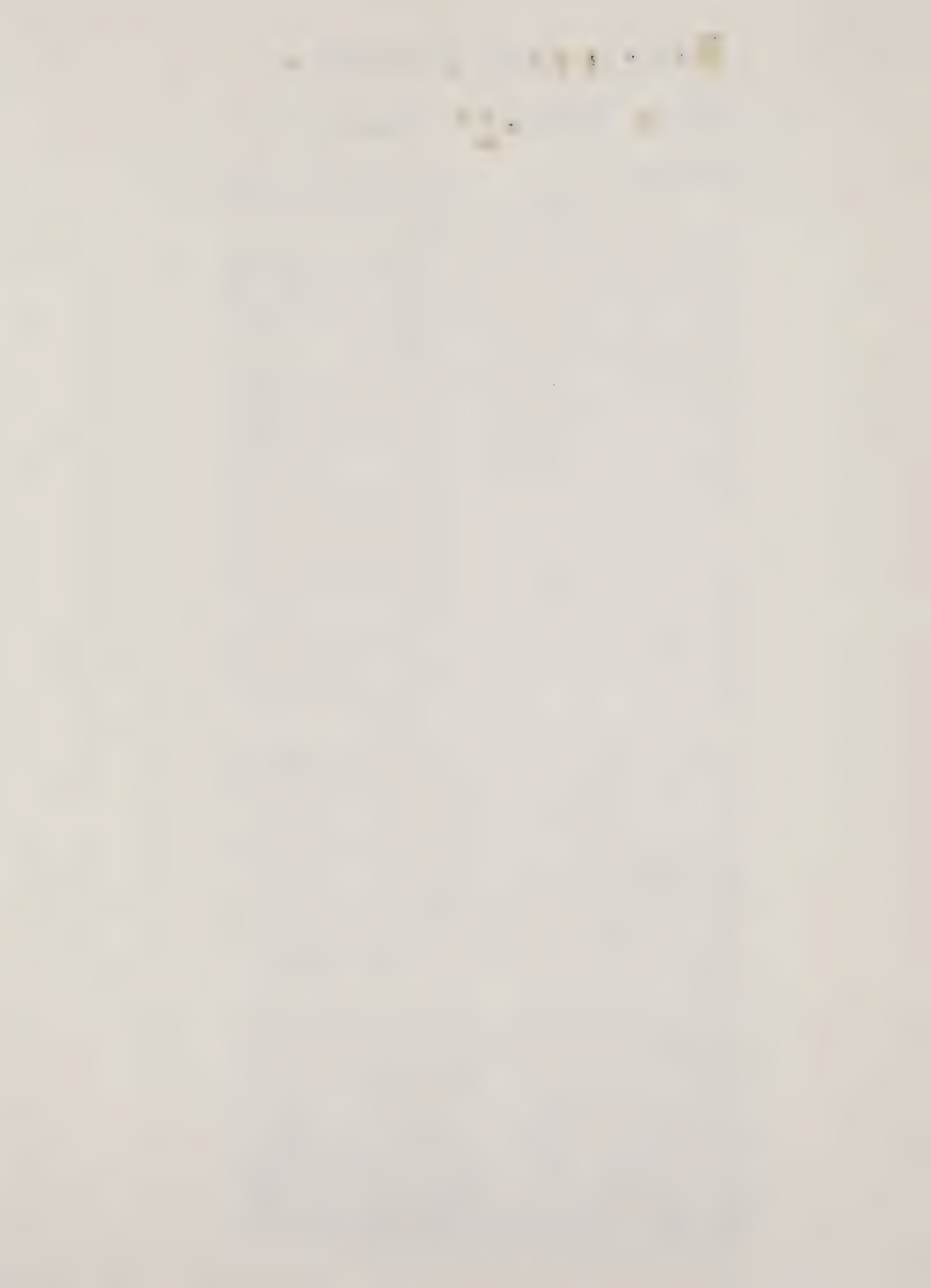
Other developers are more outspoken against the changes Flynn is expected to implement, saying he should set up a program to use the \$35 million already pledged to the housing trust before asking for more money.

Developer Jerome Rappaport has sued the city, charging that linkage biases the zoning process by influencing the city to judge project proposals on their size.

Meanwhile, lawsuits also have been filed in San Francisco and Princeton challenging whether linkage payment demands are constitutional. Developers have charged there is no cause-and-effect relationship between their projects and the housing they are forced to support and that the linkage fee is a tax by another name.

Flynn administration officials acknowledge it will be difficult to please the housing activists and the developers, but they contend their formula will yield the best results for the city.

"It is another opportunity for the mayor to be decisive in a way that will be respected if not praised," said Sullivan, who added that the plan will allow the development community and the neighborhood to share in the



High-rise for skyscraper fee

By BRIAN MOONEY

MAYOR Ray Flynn's administration is eyeing bigger "linkage" payments for downtown skyscrapers, planning to use those funds for job-training as well as housing, The Herald has learned.

A Boston Redevelopment Authority "Downtown Guidelines" planning report obtained by The Herald calls for:

● Increasing downtown deve-

Flynn wants 'linkage' increases

lopers' linkage payments to \$6 per square foot, from \$5, on skyscrapers and shortening the payment period to five years, from 12. The first \$5 would go to create new housing units, with the extra dollar going into a new job-training fund.

● Require all linkage payments for floor areas above 300 feet to be paid in a lump sum when building permits are issued, rather than staggered over five years.

● Set up an "open space trust fund" for neighborhood parks and playgrounds, using 15 percent of the proceeds of sale or lease of public property.

● Create 5,000 to 10,000 parking spaces, focusing on "peripheral" areas like the Southwest Corri-

dor, Prudential Center and North and South stations.

● Require commercial developments of over 100,000 square feet to develop child care plans for their tenants.

● Target early linkage payments to abandoned housing rehabilitation.

● Limit the height of skyscrapers in different "economic revitalization" zones — generally to 350 feet, but in special cases up to 500 feet.

● Require wind tunnel testing and minimal shadows from new buildings "to protect the ecology of the central city."

● Encourage "mixed income diversity" by subsidizing 20 percent of the units in new housing developments.

NEW LINKAGE PROGRAM

DOWNTOWN

Jobs

payable at building permit

\$1 over 2 yrs

AND

Housing

payable at building permit

\$5 over 7 yrs

NEIGHBORHOODS

Jobs

payable at building permit

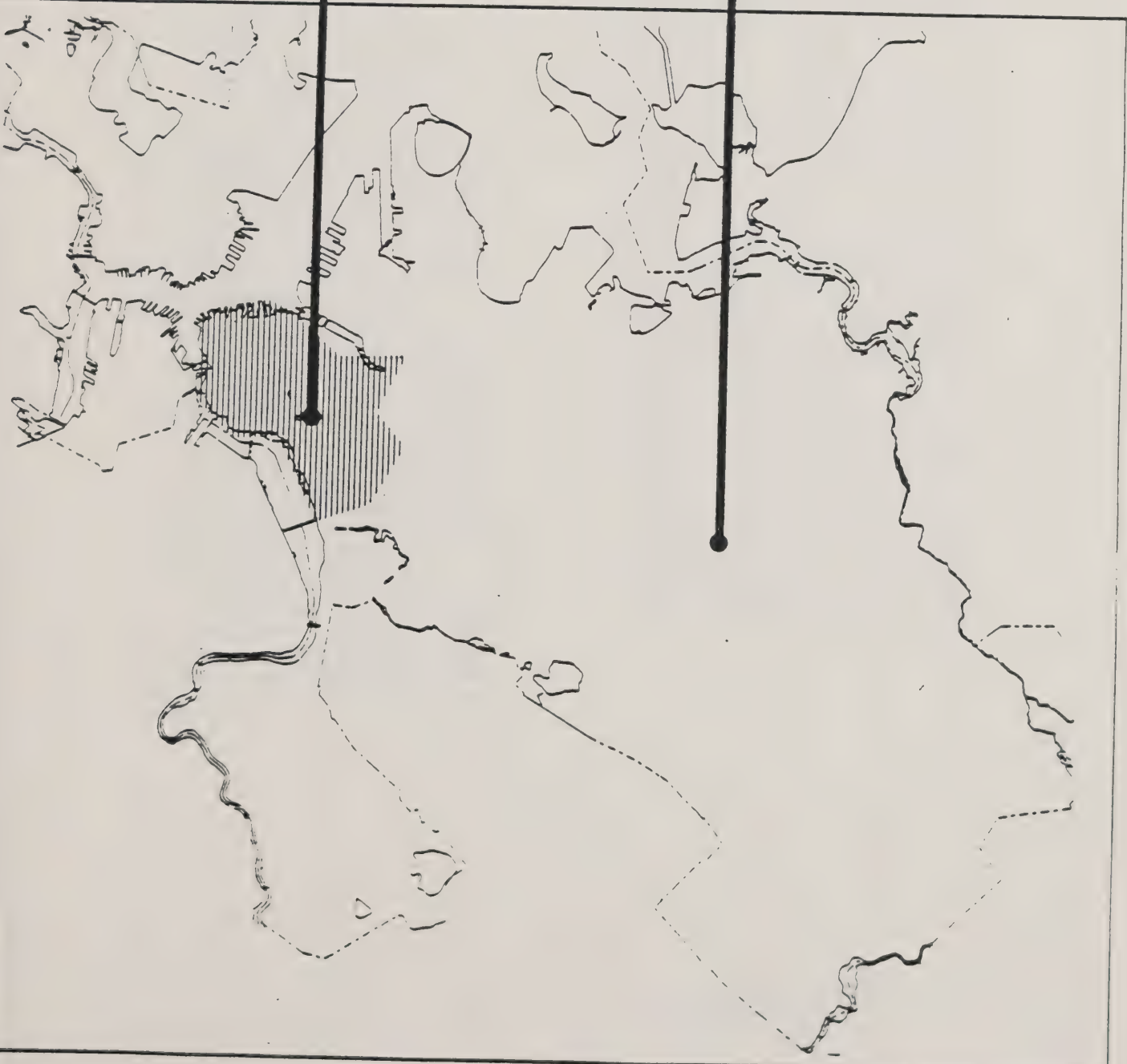
\$1 over 2 yrs

AND

Housing

payable at certificate of
occupancy or
2 years
after building permit

\$5 over 12 yrs



TAB
AUGUST 26, 1986

Linkage Unbroken

SJC decision restores key element to Flynn housing plan

By Jonathan Wells

Boston Mayor Raymond Flynn, who has been caught in an intensifying cross-fire between both the real estate industry and housing advocates over his housing policies, won a major political battle last week when the Massachusetts Supreme Judicial Court (SJC) threw out a lower court decision that had nullified Boston's "linkage" program.

The SJC rejected a March 31 decision by Suffolk Superior Court Judge Mel Greenberg that had found the three-year-old linkage fee to be a "tax" not authorized by the state legislature. While the SJC did not rule specifically on the tax issue in its August 21 decision, it suggested that the city could protect the linkage program from future court challenges by gaining passage of special legislation at the state house. Flynn and other administration officials are claiming victory.

"This legal victory will allow the people of the neighborhoods to share in the benefits of Boston's booming downtown economy," said Flynn last week. "It will mean jobs and housing opportunities which otherwise would not have been possible."

The linkage program, passed in 1983 as an amendment to the city's zoning code and adopted by Flynn as the focal point of his progressive agenda, requires commercial developers of large downtown projects to pay \$6 for each square foot they develop over 100,000 square feet into city funds for affordable housing and job training. The city will start collecting \$39 million in linkage fees in October, 1987.

"It vindicates the mayor's leadership and judgement on this question and is a thirty-nine million dollar Christmas gift to Boston for affordable housing," said Boston Redevelopment Authority (BRA) director Stephen Coyle.

Flynn's leadership on housing issues has been under sustained assault from both ends of the political spectrum since the beginning of the year. Real estate industry leaders say the mayor's initiatives threaten to freeze private investment in new housing, and housing advocates contend Flynn has failed to provide enough affordable housing. Set against the Greater Boston Real Estate Board's successful challenge of Flynn's condominium permit law and a week-long "tent city" demonstration in Jamaica Plain by housing activists, the linkage decision served as a much-needed political boost for Flynn.

"In terms of the mayor's ability to craft new policies which cope with the federal withdrawal from cities, it is obviously a vindication," said Neil Sullivan, the mayor's policy director, on the day of the ruling. **Linkage**, page 20

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TAB

AUGUST 26, 1986

Linkage

continued from page 1

ing. "This is the type of decision that will be on mayors' desks throughout the country tomorrow morning."

Charles River Park developer Jerome Rappaport, who attached the linkage challenge to a suit aimed at blocking Massachusetts General Hospital's (MGH) \$247 million rebuilding plan, declined to comment on the SJC ruling last week. Justice Herbert Wilkins, author of the decision, wrote that Rappaport, as an abutter, not a developer, lacked sufficient legal standing to challenge the linkage law.

The thrust of Rappaport's challenge was that the exaction of linkage payments in connection with large projects created an incentive for city officials to abuse the zoning code. Because the city reaps more money for each additional square foot of construction it allows a developer to build, Rappaport argued that the program "represents a continuing collusive process to undermine the uniform application of the zoning code . . . The more you violate the law, the more you pay."

But the SJC rejected Rappaport's claim that linkage "corrupts" the zoning process. "The fact that a particular decision by a municipal agency will benefit the municipality, by providing employment or reasonably priced housing to its residents . . . does

not invalidate that decision as a matter of law," wrote Wilkins.

According to Rudolph Pierce, a former Superior Court Judge who argued the linkage case on behalf of the BRA, the SJC ruled "implicitly" that linkage is a legal zoning mechanism by suggesting a simple legislative route to "foreclose on" any future challenge. "The implication is that linkage is not a tax, because legislation would not cure a tax problem," said Pierce.

In suggesting the city seek clarification of its right to exact payment from developers by filing a home rule petition, Judge Wilkins wrote: ". . . omissions in the statutory authority of the city's zoning commission to adopt Article 26 [linkage] may be cured by legislation, certainly more promptly and perhaps more fully than by litigation."

Although the SJC removed the legal cloud over linkage, it did not take the additional step of clearing a path for MGH's building plan. Instead, the court directed the hospital to return to a lower court for a ruling on the remainder of Rappaport's lawsuit against the MGH project. MGH attorney James Marcellino, a prominent real estate lawyer and chairman of Flynn's standing campaign committee, chose not to join with the BRA in its appeal of Greenberg's decision.

Tenant activists joined in applauding the SJC decision last week. "It's a victory for the progressive policies the administration has advanced," said Robert Van Meter, legislative director of the Massachusetts Tenants Organization. "It seemed that in the last few months most of those initiatives had faced some sort of challenge, but I think the tide may be turning. I hope this is the beginning of a winning streak for progressive housing policies in the city."

Boston Tries 'Linkage' To Help Neighborhoods

BOSTON, From E1

the nation where the office market still is healthy, annual rents for new downtown office buildings are in the \$40-a-square-foot range, several dollars above the top rates in Washington. Some luxurious office towers in the rapidly growing financial area are renting for \$60 to \$70 a square foot, according to a city development official.

"We have a city that is growing and thriving, but . . . there are a number of people who are not benefiting from that economic growth . . .," Flynn said. "We want to see that it's shared with the people in the neighborhoods. Linkage has strong political support. The only people who are opposed to it are a very few greedy developers."

The explosion in commercial development has been matched by burgeoning residential sales, touched off by plummeting mortgage interest rates. Real estate brokers and buyers are moving into the city's poorer neighborhoods, snapping up and renovating old houses.

The resulting displacement of renters has driven the vacancy rate down to an estimated 1 to 2 percent, has escalated rents and has prompted some landlords to charge three months rent as a security deposit instead of the traditional one month, said Ann Kerrey of the Boston Housing Partnerships Inc., a coalition of nonprofit organizations working with low-income housing projects.

Single-family-home prices went up by 38 percent last year alone, to an average of \$144,800, and rent increases ranged from 18 to 31 percent during the same period, according to Peter Dreier, the Boston Redevelopment Authority's director of housing.

The 40 percent of Boston's population who are low- and moderate-income renters are caught in the squeeze. A linkage program was deemed a good way to help them, he said.

Commercial and office developer Robert L. Beal believes most developers "have accepted [linkage] as

part of the cost of doing business in Boston." Beal said he supports the program as a way to provide low-income housing and neighborhood improvement "in the absence of anything else."

The mention of linkage has the effect on some Boston developers, however, that a red flag reportedly has on a bull.

"From its inception, developers have been very concerned about linkage," said Garen Bresnick, executive vice president of the Massachusetts Home Builders Association. "We're in a very hot market here and price is a very big concern." Adding linkage fees to costs "will put some projects in jeopardy."

The zoning code amendment establishing linkage, passed by the City Council two years ago, provided for a charge of \$5 per square foot of a building's floor space for projects larger than 100,000 square feet to be paid over 12 years, beginning when occupancy permits are granted. When the commercial real estate market took off, Flynn signed an executive order increasing the fee to \$6 paid over seven years, beginning with the start of construction, said Jerome E. Rubin of the city's Department of Public Facilities and former housing adviser to Flynn.

Linkage suffered a setback last week, when a city superior court judge struck down the zoning law amendment that created the program, ruling that Boston lawmakers did not have legal authority to approve it, and that the fee is a tax not permitted under the Massachusetts constitution.

Jerome L. Rappaport, the developer who filed the suit that resulted in Judge Mel L. Greenberg's decision, applauded the ruling. "Zoning laws are designed to provide land planning protection . . . not to be used as a fund-raising mechanism," Rappaport said.

The developer sued Massachusetts General Hospital, charging that construction planned by the hospital would block the views of

See BOSTON, E11, Col. 1

Boston Hopes 'Linkage' Will Help Neighborhoods

BOSTON, From E10

residents in his Charles River Park development and make the luxury homes less marketable. Rappaport said the hospital got permits for the massive new development by agreeing to pay linkage fees.

The city government and the Boston Redevelopment Authority have appealed Greenberg's decision.

They have argued that procedural matters, not the zoning amendment itself, were presented to Greenberg and that he exceeded his authority in his ruling, according to Albert W. Wallis, of the Boston corporation counsel's office. The city also believes it has the legal authority to enact linkage and that the fees are not a tax, he added.

Hearings planned for the spring to determine the linkage fees for a number of planned commercial developments will be held, so that, if Greenberg's decision is overturned, the projects will be "in the pipeline," said Ralph Memolo, a spokesman for the authority.

The effect on scheduled payments for the first 15 projects subject to the linkage amendment, due early in 1987, is unclear. But the

possibility of borrowing against the expected payments, which the redevelopment authority had considered, "is virtually eliminated" by the court ruling, Memolo said.

The 15 developments, worth \$35.5 million in fees to the city, include International Place, which will be one of Boston's biggest office buildings with 1 million square feet of offices in two towers and 70,000 square feet of shops, and Rowes-Fosters Wharves, a big condominium-office-hotel complex on the Boston harbor.

The court decision is not expected to halt the first "parcel-to-parcel" linkage deal, for which the city will soon begin to accept bids, Memolo said. The buyer of a parcel of city-owned land bordering the Boston financial district also will have to build a "substantial commercial" project in an economically deprived area, according to William D. Whitney, another Boston development official.

Net proceeds from the sale of the downtown land, after debts on the property are paid, will be given to developers for use in neighborhood construction, enabling the builders to charge below-market rents that will attract tenants, he said.

